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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on the human rights obligations relating to the conservation and sustainable use of biological diversity. In his report, he describes the importance of ecosystem services and biodiversity for the full enjoyment of human rights and outlines the application of human rights obligations to biodiversity-related actions.

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I. Introduction

1. In its resolution 28/11, the Human Rights Council encouraged the Special Rapporteur to promote the realization of human rights obligations relating to the environment, continuing to give particular emphasis to practical solutions. In 2015, the Special Rapporteur presented a report to the Council (A/HRC/31/53) recommending methods of implementing the obligations, and he followed up on many of the recommendations in 2016.

2. For example, in partnership with the United Nations Environment Programme, he began a series of regional judicial workshops on rights-based approaches to environmental issues, with the first held in South Africa in April 2016 and the second planned to be held in Brazil in 2017. He helped the United Nations Institute for Training and Research to develop an online course entitled "Human rights and environmental protection for sustainable development". He also worked with the Universal Rights Group and other partners to prepare a web portal, environment-rights.org, with resources for environmental human rights defenders. In 2017, the final full year of his mandate, the Special Rapporteur intends to implement another recommendation by preparing practical guidelines, or guiding principles, on the human rights obligations relating to the environment. To inform the preparation of the guidelines, he will engage in consultations with Governments and other stakeholders.

3. In its resolution 28/11, the Human Rights Council also encouraged the Special Rapporteur to continue to clarify the human rights obligations relating to the environment. In the present report, the Special Rapporteur examines the obligations relating to the conservation and sustainable use of ecosystems and biological diversity (biodiversity). In preparation for the report, he held an expert meeting and a public consultation from 20 to 22 September 2016. He also attended the 2016 World Conservation Congress and the thirteenth meeting of the Conference of the Parties to the Convention on Biological Diversity. He sent a questionnaire to States and other interested stakeholders, which elicited over 60 responses, and he examined statements and reports by international organizations, human rights mechanisms, scholars and other sources.

4. Section II explains that biodiversity is necessary for the enjoyment of a wide range of human rights and that the loss of biodiversity threatens the enjoyment of those rights. Section III outlines the human rights obligations relating to the protection of biodiversity. Section IV concludes with recommendations on the conservation and sustainable use of biodiversity to protect the full enjoyment of human rights.

II. The dependence of human rights on biodiversity

5. The full enjoyment of human rights, including the rights to life, health, food and water, depends on the services provided by ecosystems. The provision of ecosystem services depends on the health and sustainability of ecosystems, which in turn depend on biodiversity. The full enjoyment of human rights thus depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights.[1]

[1] The present report focuses on the value of biodiversity to human beings, but the Special Rapporteur notes that the components of biodiversity also have intrinsic value that may not be captured by a human rights perspective.

A. Human rights and ecosystem services

6. The Millennium Ecosystem Assessment, a comprehensive review of the relationship between ecosystems and human well-being, states: "Everyone in the world depends completely on Earth's ecosystems and the services they provide, such as food, water, disease management, climate regulation, spiritual fulfilment, and aesthetic enjoyment."[2] Ecosystem services include provisioning services such as food, water, timber and fiber, which are necessary for basic material needs, including nutrition, shelter and clothing. Regulating services such as purification of water and protection against erosion support clean water and human health. Ecosystems also provide vital cultural services to the many people around the world whose religious and spiritual values are rooted in nature.[3]

7. International law recognizes that everyone has human rights to what the Assessment describes as the components of human well-being. The relationship between ecosystems and human rights is mediated by social institutions, culture and technology in countless ways. But it is obvious that without the services provided by healthy ecosystems, the ability to enjoy many rights, including the rights to life, health, food, water and participation in cultural life, would be severely compromised or impossible. As the Special Rapporteur has described in previous reports (A/HRC/22/43 and A/HRC/25/53), the Human Rights Council and other human rights bodies have recognized that the full enjoyment of human rights depends on a healthy, sustainable environment. Although they have not typically used the phrase "ecosystem services", such services are what a healthy environment provides.

8. Human rights law does not require that ecosystems remain untouched by human hands. Economic and social development depends on the use of ecosystems, including, in appropriate cases, the conversion of natural ecosystems such as old-growth forests into human-managed ecosystems such as pastures and cropland. To support the continued enjoyment of human rights, however, this development cannot overexploit natural ecosystems and destroy the services on which we depend. Development must be sustainable, and sustainable development requires healthy ecosystems. In Sustainable Development Goal 15, States committed to "protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss" (General Assembly resolution 70/1).[4]

B. Human rights and biodiversity

9. Although the importance of a healthy environment for the enjoyment of human rights is widely recognized, the relationship between human rights and biodiversity remains less well understood. The Convention on Biological Diversity (art. 2) defines biodiversity as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems". Biodiversity

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[2] Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (Island Press, Washington, D.C., 2005), p. 1. The report defines the term "ecosystem" as "a dynamic complex of plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit". Ibid., p. v.

[3] A fourth category, supporting services, which includes soil formation, photosynthesis and nutrient cycling, underlies the other three types of ecosystem services. See *Ecosystems and Human Well-being: Synthesis*, p. 40.

[4] Targets under Goals 2, 6 and 14 address the protection of agricultural, water-related, and marine and coastal ecosystems.

thus includes not only the millions of different species on Earth;[5] "it also consists of the specific genetic variations and traits within species (such as different crop varieties), and the assemblage of these species within ecosystems that characterize agricultural and other landscapes such as forests, wetlands, grasslands, deserts, lakes and rivers".[6]

10. In the words of the Millennium Ecosystem Assessment, "biodiversity is the foundation of ecosystem services to which human well-being is intimately linked".[7] Biodiversity supports ecosystem services and the human rights that depend upon them in many ways. In general, biodiversity contributes to the productivity and stability of ecosystem processes.[8] More diverse ecosystems are more resilient to disasters and to long-term threats such as climate change.[9] More specifically, biodiversity contributes to particular ecosystem services that directly support the full enjoyment of human rights. The present report highlights some of those contributions with respect to: the rights to life and health; the right to an adequate standard of living; and the right to non-discrimination in the enjoyment of rights.

1. Rights to life and health

11. The Universal Declaration of Human Rights (art. 3) and the International Covenant on Civil and Political Rights (art. 6) recognize the right to life. The Human Rights Committee has emphasized that the right to life should not be interpreted narrowly, and that the protection of the right requires States to adopt positive measures such as measures to reduce infant mortality and increase life expectancy.[10] The Constitution of the World Health Organization and article 12 of the International Covenant on Economic, Social and Cultural Rights recognize the right to the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has stated that the right to health "extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment".[11]

12. Of the many connections between biodiversity and healthy human life, the present report focuses on four, relating to medicinal drugs, microbial diversity, infectious diseases and mental health.[12]

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[5] Although estimates of species vary widely, a recent estimate is that there is about 7.7 million species of animals and about 8.7 million eukaryotic species in all, of which only about 1.2 million have been catalogued. Camilo Mora and others, "How many species are there on Earth and in the ocean?", *PLOS Biology*, vol. 9, No. 8 (2011), p. 1.

[6] World Health Organization (WHO) and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health — a State of Knowledge Review* (Geneva, 2015), p. 28.

[7] Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Biodiversity Synthesis* (World Resources Institute, Washington, D.C., 2005), p. 18.

[8] *Connecting Global Priorities*, p. 34; Bradley J. Cardinale and others, "Biodiversity loss and its impact on humanity", *Nature*, vol. 486, (June 2012), p. 59.

[9] *Connecting Global Priorities*, p. 18.

[10] General comment No. 6 (1982) on the right to life, para. 5.

[11] General comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4.

[12] A particularly useful resource is the 2015 report of WHO and the Secretariat of the Convention on Biological Diversity cited above (see footnote 6), which contains a summary of the state of knowledge on biodiversity and human health and which is available at https://www.cbd.int/health/stateofknowledge. See also Eric Chivian and Aaron Bernstein, eds., *Sustaining Life: How Human Health Depends on Biodiversity* (Oxford University Press, 2008).

Medicinal drugs

13. One of the best-known connections between biodiversity and health is the derivation of medicinal drugs from natural products.[13] Humans have relied on biodiversity as a source of medicine throughout our history. The oldest known natural mummy, found in the Italian Alps in 1991 after being frozen for more than 5,000 years, carried *Piptoporus betulinus*, a birch fungus that reduces inflammation.[14] Famous recent examples include: *Cinchona officinalis*, a South American tree whose bark produces quinine, a treatment for malaria; *Catharanthus roseus*, the Madagascar rosy periwinkle, first used as a traditional medicine and then as the basis for successful treatments of childhood leukemia and Hodgkin's lymphoma; *Penicillium citrinum*, a fungus whose derivation reduces cholesterol synthesis; and *Digitalis purpurea*, the purple foxglove, used to treat heart disease. More than half of the 1,355 drugs approved by the United States Food and Drug Administration between 1981 and 2010 had natural origins.[15] Our debt to nature is particularly great with respect to antibiotics, which have saved millions of lives: 10 of the 14 major classes of antibiotics are derived from microorganisms.[16]

14. Biodiversity is an irreplaceable resource for new medicines, but we are rapidly destroying the resource before we have discovered all that it has to offer. Only a fraction of the hundreds of thousands of plant species have been studied for their medicinal potential, and other living resources, including the marine and the microbial, remain almost completely unexamined. Species are disappearing before we understand what we have lost, but scientists know of tantalizing missed opportunities. For example, two species of gastric brooding frogs indigenous to Australia had unique reproductive physiology that might have provided insights into how to relieve peptic ulcers. Their potential was lost forever when the species became extinct in the 1980s. Even plants known to be valuable are often at risk. As many as 40 per cent of the approximately 60,000 plant species thought to be used for medicinal purposes are endangered, including plants long important in traditional medicine such as the African cherry (*Prunus Africana*) and the Himalayan yew (*Taxus wallichianaî*).[17]

Microbial diversity

15. Another way that biodiversity supports human health is even more pervasive but less widely recognized. Studies indicate that the development of normal immune responses, especially to allergens, requires exposure to diverse natural habitats.[18] Each of us carries microorganisms that interact with the biodiversity in the environment in ways that are critical for "the induction and maintenance of immunoregulatory circuits and tolerance".[19] Environmental microorganisms were "previously ubiquitous and abundantly present e.g. in our food, drinking water and milk", but as more people live in urban settings and as global biodiversity decreases, these interactions are decreasing as well.[20] The reduced diversity of

[13] *Connecting Global Priorities*, p. 11. See, generally, Enrique Ravina, *The Evolution of Drug Discovery: From Traditional Medicines to Modern Drugs* (Wiley, 2011), pp. 107-312.

[14] *Connecting Global Priorities*, p. 165.

[15] Ibid.

[16] Ibid., p. 11.

[17] Ibid., pp. 11 and 165.

[18] Paul A. Sandifer and others, "Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation", *Ecosystem Services*, vol. 12 (April 2015), pp. 1 and 7.

[19] Tari Haahtela and others, "The biodiversity hypothesis and allergic disease: World Allergy Organization position statement", *World Allergy Organization Journal*, vol. 6, No. 3 (January 2013), pp. 1 and 12.

[20] Ibid.

environmental microorganisms is "a part of the more global problem of disappearing natural environments and general loss of biodiversity. The 'far out biodiversity' (plant and animal life) and the 'close to biodiversity' (micro-biotas) are interconnected and shrinking".[21] The loss of this microbial diversity appears to cause problems of immunoregulation, leading human immune systems to attack the wrong targets, which in turn causes autoimmune diseases, allergic disorders and other non-communicable inflammatory diseases to become more prevalent in all parts of the world.[22]

Infectious diseases

16. For some zoonotic diseases,[23] the loss of biodiversity has been linked to increased prevalence in humans. "For instance, hantavirus prevalence is thought to increase when mammal diversity decreases; the rise of West Nile virus is correlated with decreases in non-passerine bird richness; landscape prevalence of *Bartonella* increases when large wildlife are removed; and habitat fragmentation increases risk of Lyme disease."[24] In such cases, a high diversity of pathogen hosts appears to dilute the transmission paths of pathogens to humans; as diversity decreases, the transmission rates increase.[25]

Mental health

17. It is increasingly clear that exposure to nature has beneficial effects on mental health. A comprehensive review of studies concluded that "experiencing nature can have positive effects on mental/psychological health, healing, heart rate, concentration, levels of stress, blood pressure, behaviour, and other health factors. For example, viewing nature, even through a window, improves recovery from surgery."[26] Most of the cited studies examine exposure to green space or natural surroundings without controlling for diversity. However, "there is mounting evidence that not just exposure to nature, but contact with diverse natural habitats and many different species, has important positive impacts for human health".[27]

2. Right to an adequate standard of living

18. The Universal Declaration of Human Rights (art. 25) and the International Covenant on Economic, Social and Cultural Rights (art. 11) recognize the right to an adequate standard of living. The Committee on Economic, Social and Cultural Rights has explained that the right to an adequate standard of living is intentionally expansive and that the Covenant includes "a number of rights emanating from, and indispensable for, the realization of the right".[28] These rights include the rights to food and housing, to which the Covenant explicitly refers, and the rights to safe and clean water and sanitation, which have been recognized by the General Assembly, in its resolution 64/292, and the Human Rights Council, in its resolution 15/9.

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[21] Ibid. See also Ilkka Hanski, "Environmental biodiversity, human microbiota, and allergy are interrelated", *Proceedings of the National Academy of Sciences*, vol. 109, No. 21 (2012), p. 8334.

[22] *Connecting Global Priorities*, p. 150.

[23] Zoonotic diseases are normally found in animals but can infect humans.

[24] *Connecting Global Priorities*, p. 132.

[25] Aaron Bernstein, "Biological diversity and public health", *Annual Review of Public Health*, vol. 35 (January 2014), pp. 153 and 159.

[26] Paul A. Sandifer and others, "Exploring connections", p. 3.

[27] Ibid., p. 6. See also Richard A. Fuller and others, "Psychological benefits of greenspace increase with biodiversity", *Biology Letters*, vol. 3 (2007) p. 390; *Connecting Global Priorities*, pp. 200-209.

[28] General comment No. 15 (2002) on the right to water, para. 3.

19. The benefits of biodiversity are particularly evident in relation to the right to food. Genetic diversity within species increases the yield of commercial crops,[29] and species richness in freshwater fisheries is associated with greater productivity.[30] (Tree species diversity and richness also increase production of timber, which supports the fulfilment of the right to housing.[31]) Biodiversity is especially crucial to the stability and resilience of food sources. Increasing diversity of fish species is associated with greater stability of fisheries,[32] and "resiliency in agroecosystems to environmental change depends on the innate attributes of crop varieties, which makes preserving crop biodiversity [e.g., through seed banks] a vital part of food security".[33] Access to a diverse variety of local plants helps to protect vulnerable rural communities, in particular, which may rely on them when harvests fail or sudden expenses occur.[34] Climate change will test the resiliency of agriculture and fisheries more and more, and "the increased use of agricultural biodiversity will play an essential part in the adaptation and mitigation actions needed to cope with climate change and ensuring continued sustainable supplies of healthy food, providing adaptive capacity, diverse options to cope with future change and enhanced resilience in food production systems".[35]

20. Food security also depends on the biodiversity of the surrounding environment. "Successfully raising any single crop requires more than its seeds; a multitude of species are necessary, from microbes, insects, worms, and small vertebrates in the soil to a host of species above ground that control pests, fertilize soils, and pollinate flowers. Marked population declines have been observed in organisms vital to agriculture in recent years, and these losses bear directly on food security."[36] For example, biodiversity directly contributes to the effective pollination and seed dispersal of useful plants and increases resistance to agricultural pests and exotic plants.[37] In this respect, the unusually high losses in recent years of colonies of *Apis mellifera* (western honeybees), an important pollinator, have been of particular concern, since pollination is necessary for more than three quarters of the 107 leading global food crops, including many fruits and vegetables that are important sources of micronutrients and vitamins.[38]

21. Biodiversity also helps to support the right of access to clean and safe water. Increased forest areas significantly improve water flow regulation by reducing runoff and providing greater water storage.[39] Diverse animal, plant and algae species help to draw excess nitrogen and phosphorus from aquatic ecosystems.[40] Bivalve molluscs, which filtrate large amounts of water in both marine and freshwater environments, can play a particularly important role in water purification. For example, a freshwater mussel species in South

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[29] See Cardinale and others, "Biodiversity loss and its impact on humanity", p. 62.

[30] P.A. Harrison and others, "Linkages between biodiversity attributes and ecosystem services: a systematic review", *Ecosystem Services*, vol. 9 (September 2014), pp. 191 and 195.

[31] Cardinale and others, "Biodiversity loss and its impact on humanity", p. 62. See also Harrison and others, "Linkages between biodiversity attributes and ecosystem services".

[32] Cardinale and others, "Biodiversity loss and its impact on humanity", p. 62.

[33] Bernstein, "Biological diversity and public health", p. 158.

[34] *Ecosystems and Human Well-being: Biodiversity Synthesis*, p. 30; *Connecting Global Priorities*, pp. 111-112.

[35] *Connecting Global Priorities*, p. 6.

[36] Bernstein, "Biological diversity and public health", p. 158.

[37] *Ecosystems and Human Well-being: Biodiversity Synthesis*, pp. 25 and 29.

[38] Intergovernmental Science-Policy Platform on Biodiversity, "Summary for policymakers of the assessment report on pollinators, pollination and food production" (2016), pp. 8 and 16; *Connecting Global Priorities*, p. 81.

[39] Harrison and others, "Linkages between biodiversity attributes and ecosystem services", p. 195.

[40] *Connecting Global Priorities*, p. 48.

America, *Diplodon chilensis*, has been shown to decrease eutrophication by reducing total phosphorus and controlling phytoplankton densities.[41] Natural filtration services can also clean water of human-made toxic substances. A famous example is *Epischura baikalensis*, a crustacean native to Lake Baikal in the Russian Federation, the largest freshwater lake by volume in the world. Each no bigger than a poppy seed, these copepods keep the water clear by ingesting pollutants as well as food. In the words of a local environmentalist, they are "the heroes of the lake".[42] Of course, there are limits to the ability of ecosystems to clean up after us. By removing persistent organic pollutants from the water, *Epischura* and other species introduce them into the food chain, where they bioaccumulate in larger animals such as fish, seals and, eventually, humans.[43]

3. Non-discrimination and the rights of those most vulnerable to the loss of biodiversity

22. The degradation and loss of biodiversity often result from and reinforce existing patterns of discrimination. Although everyone depends on ecosystem services, some people depend on them more closely than others. For indigenous peoples, forest-dwellers, fisherfolk and others who rely directly on the products of forests, rivers, lakes and oceans for their food, fuel and medicine, environmental harm can and often does have disastrous consequences. This is true not only because of their close relationship to nature, but also because they typically have little economic and political power within their countries, so they cannot easily obtain substitutes for their lost natural resources.[44] Their marginalization means that they have limited or no access to decision-making processes or legal remedies. Their legal rights to the territory and resources on which they depend may not even be recognized by their Governments.

23. In addition to the material consequences of environmental degradation, there are often grave cultural effects. Many religions call on all human beings to be stewards of the riches of the natural world. However, the loss of particular places is felt predominantly by those who associate their sacred rituals and sites with those locations. Food and shelter may be replaced, but the destruction of a sacred grove may cause irreparable harm. For example, when members of the AmaXhosa people in South Africa were asked what would happen if sites sacred to their community were destroyed, they replied "it means that our culture is dead."[45]

24. Cutting down forests for timber and to clear land for agricultural production, building dams to harness rivers for hydroelectric power and opening fisheries to industrial exploitation may well have economic benefits. But even if the economic benefits outweigh the real economic and cultural costs at a macro scale (which they often do not, since the real costs of destroying a forest or a river ecosystem are almost never taken into account),[46] the benefits are recovered disproportionately by those who did not depend directly on the resource and the costs are imposed disproportionately on those who did. As a result, "the loss of biodiversity-dependent ecosystem services is likely to accentuate inequality and marginalization of the most vulnerable sectors of society, by decreasing their access to basic materials for a healthy life and by reducing their freedom of choice and action. Economic development that does not consider effects on these ecosystem services may

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[41] Ibid., citing sources.

[42] Peter Thomson, "Russia's Lake Baikal: preserving a natural treasure", *environment360* (3 June 2008).

[43] Ibid.

[44] *Connecting Global Priorities*, p. 32.

[45] *Ecosystems and Human Well-being: Biodiversity Synthesis*, p. 31.

[46] *Ecosystems and Human Well-being: Synthesis*, pp. 6-11. For studies of the economic value of biodiversity, see the Economics of Ecosystems and Biodiversity initiative, at www.teebweb.org.

decrease the quality of life of these vulnerable populations, even if other segments of society benefit."[47]

25. The loss of biodiversity-dependent ecosystem services also has disproportionate effects on people who are vulnerable for other reasons, including gender, age, disability, poverty or minority status. Much more research is necessary to understand and respond to the ways that access to and management of biodiversity vary according to gender and other characteristics, and the differentiated effects of the loss and degradation of biodiversity. The lack of disaggregated data on biodiversity access, use and control hampers efforts to design and implement measures that appropriately respond to these types of vulnerabilities.[48]

III. Human rights obligations relating to the conservation and sustainable use of biodiversity

26. States have obligations to protect against environmental harm that interferes with the enjoyment of human rights, and the obligations apply to biodiversity as an integral part of the environment. As the Special Rapporteur emphasized last year in relation to climate change, these obligations continue to be studied and clarified, and the present report should not be taken as the final word on their content. In particular, it does not substitute for the more detailed analysis of particular human rights by mandate holders, treaty bodies, regional human rights tribunals or others. Rather, the goals are to provide an overview of this evolving area of the law and a framework for further elaboration.

A. Procedural obligations

27. The procedural human rights obligations of States in relation to the environment include duties: (a) to assess impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm (see A/HRC/25/53, para. 29). They are supported by provisions in international environmental instruments, including principle 10 of the 1992 Rio Declaration on Environment and Development.

28. Each of these obligations applies to measures that affect biodiversity in ways that threaten the full enjoyment of the human rights that depend on its components. For example, before a State grants a concession for exploitation of a forest, authorizes a dam on a river or takes other steps that allow the degradation or loss of biodiversity, it should assess the environmental and social impacts of the proposal, provide information about its possible effects, facilitate informed public participation in the decision-making process, including by protecting the rights of freedom of expression and association, and provide access to effective legal remedies for those who claim that their rights have been violated.

[47] Sandra Diaz and others, "Biodiversity loss threatens human well-being", *PLOS Biology*, vol. 4, No. 8 (August 2006), pp. 1300 and 1302.

[48] *Connecting Global Priorities*, pp. 32-33.

29. Some conservation agreements require or encourage States to conduct assessments, provide access to information and facilitate public participation.[49] In addition, many States have made important strides to implement access rights through their national legislation, including with respect to measures that would affect ecosystems and biodiversity. Many of the responses to the questionnaire sent by the Special Rapporteur provide examples of procedural safeguards and innovations at the national level.[50]

30. At the international level, States have developed exemplary practices with respect to the right to information, including regular assessments of progress towards the goals of the Convention on Biological Diversity.[51] The most important recent development relating to the right to information may be the creation in 2012 of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. More than 100 States are parties to the Platform, whose purpose is to produce high-quality, peer-reviewed reports in response to requests by Governments. Its first report was an assessment of different scenarios and models of biodiversity and ecosystem services and its second an examination of pollination and pollinators around the world. The Platform's ongoing work programme includes four regional assessments, one each for Africa, the Americas, Asia and the Pacific, and Europe and Central Asia.[52]

31. There are also many failures to meet procedural obligations in relation to biodiversity. For example, many States need to provide more effective remedies to those harmed by the loss and degradation of ecosystems. Perhaps the most egregious problem, however, is the continuing failure to protect environmental human rights defenders, which has been recently described in detail by the Special Rapporteur on the situation of human rights defenders (A/71/281). Often the links between environmental defence and the enjoyment of human rights are clear, as when a community objects to a mine that would pollute its drinking water. But even people who protect components of ecosystems whose benefits to humans may be less obvious, such as endangered species (see, e.g., A/HRC/25/53/Add.1, para. 54), are still defending the biodiversity on which we all depend. They are also environmental human rights defenders, and they deserve our protection.

32. Unfortunately, like other defenders, they often fail to receive it. In 2015 alone, there were 185 confirmed killings of environmental and land defenders around the world.[53] Countless others are harassed and subjected to violence. As pressures to exploit natural resources grow, those who oppose unsustainable exploitation are increasingly under attack. Sometimes, government actors themselves commit or are complicit in the persecution. Even when they are not directly involved, Governments often fail to respond to threats, investigate violations and arrest those responsible, thereby creating a culture of impunity that encourages further attacks. Moreover, States have adopted laws that criminalize peaceful protests and opposition, restrict or prohibit the operations of civil society

[49] See, e.g., the Convention on Biological Diversity, art. 14 (environmental assessment, public participation); the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, art. 3 (public participation) and the Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 27 (public information).

[50] All of the responses to the questionnaire are available at www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SubmissionsBiodiversity.aspx.

[51] The assessments are available at www.cbd.int/gbo/default.shtml.

[52] Information about the Platform and its work programme is available at www.ipbes.net.

[53] Global Witness, *On Dangerous Ground* (2016). Available at www.globalwitness.org/en/reports/dangerous-ground.

organizations and enable civil suits that seek to intimidate and silence environmental defenders.[54]

B. Substantive obligations

33. States have obligations to adopt legal and institutional frameworks that effectively protect against environmental harm that interferes with the enjoyment of human rights. As section II describes, the loss of ecosystem services and biodiversity threatens a broad spectrum of rights, including the rights to life, health, food, water, culture and non-discrimination. States therefore have a general obligation to safeguard biodiversity in order to protect those rights from infringement. That obligation includes a duty to protect against environmental harm from private actors, and businesses have a responsibility to respect the rights relating to biodiversity as well (see A/HRC/25/53, paras. 58-61).

34. States have discretion to strike a balance between environmental protection and other legitimate societal goals. But the balance must be reasonable, and it should never result in unjustified, foreseeable infringements of human rights. In the context of environmental harm generally, human rights bodies have identified factors that help to clarify whether a reasonable balance has been struck, which include whether the measure in question is the result of a process that complied with the procedural obligations described in the previous section, whether it is non-retrogressive, whether it is non-discriminatory and whether it accords with international and domestic standards (see A/HRC/25/53, paras. 53-56). Finally, States should fully implement their laws protecting human rights related to the environment.

35. The specific contours of substantive obligations may vary by situation. In addition to a general duty to protect biodiversity in order to support the full enjoyment of the range of human rights that depend upon it and the ecosystem services it underpins, States may also have more specific duties to protect places or components of biodiversity that are especially necessary for the enjoyment of rights of the members of particular communities, including the vulnerable communities discussed in the next section.

36. States should also cooperate with one another to protect biodiversity and ecosystem services. As the Special Rapporteur has previously explained (see A/HRC/31/52, paras. 42-48), international cooperation normally plays only a supporting role in the protection of human rights, but some types of environmental harm to human rights may trigger the duty of international cooperation, which has support in the general practice of States and, more specifically, in the Charter of the United Nations (arts. 55-56) and the International Covenant on Economic, Social and Cultural Rights (art. 2). The effective protection of biodiversity, like the effective mitigation of climate change, is possible only with international cooperation, as States have often recognized. Many of the components of biodiversity, the threats to biodiversity and the benefits biodiversity provides have transboundary or global dimensions.

37. For over a century, States have entered into treaties to protect components of biodiversity that straddle or migrate across borders, such as transboundary water bodies and migratory animals.[55] In more recent decades, States have increasingly realized the many

[54] See the report by the Special Rapporteur entitled "Environmental human rights defenders: a global crisis", at www.universal-rights.org.

[55] The many examples include the Convention on the Conservation of Migratory Species of Wild Animals, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of

threats to biodiversity that have transboundary aspects. The direct drivers of biodiversity loss include the destruction and degradation of natural habitat, the overexploitation of valuable plants and animals, pollution, invasive alien species and climate change. Some of these drivers, including climate change and transboundary pollution, are inherently beyond the control of any one State. Even habitat loss and overexploitation of local resources often have international dimensions. Poaching plants and animals in developing countries, for example, is largely driven by demand in foreign markets. To combat such international trafficking, States adopted the Convention on International Trade in Endangered Species of Wild Fauna and Flora, but a multibillion dollar illegal trade in wildlife continues. Well-known examples include killing elephants for ivory and rhinoceroses for their horns, capturing rare parrots and turtles to become pets and harvesting endangered rosewood trees to make furniture.

38. Many of the benefits of biodiversity also have international dimensions. Food and medicine derived from natural resources in one part of the world can benefit people everywhere. Conversely, diseases that spread more quickly because of reduced biodiversity may affect people far from where they first emerged. Other benefits of biodiversity may be less concrete, but nonetheless widely shared. For example, many people find the species with which we share this planet fascinating and inherently valuable, and they feel a sense of loss when they learn of the extinction of species such as the Bramble Cay melomys (*Melomys rubicola*), the only mammal endemic to the Great Barrier Reef. Its extinction in 2016 was the first attributed to climate change. The small island where the melomys lived was inundated multiple times by rising sea levels, killing the animals and destroying their habitat.[56]

39. The recognition that we all benefit from the interwoven planetary web of biodiversity, and that we are all harmed by its degradation, has led to the adoption of many conservation agreements.[57] The one with the widest scope is the Convention on Biological Diversity, whose preamble affirms that the conservation of biological diversity is a common concern of humankind and whose objectives are "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources". Through the Convention and other agreements, States have identified the steps necessary to conserve and sustainably use biodiversity. If implemented, these measures would protect biodiversity and satisfy the joint obligation of States to cooperate to protect the human rights dependent upon biodiversity.

40. The enormous problem is that the agreements have often not been effectively implemented and their goals have not been met. As a result, biodiversity continues to decrease at unsustainable rates. There are many examples of failures to protect biodiversity, but the present report focuses on efforts made pursuant to the Convention on Biological Diversity. To meet its objectives, the Convention requires each party to take specific measures, "as far as possible and as appropriate", including developing national plans for the conservation and sustainable use of biodiversity (art. 6), identifying and monitoring

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Straddling and Highly Migratory Fish Stocks and the International Convention for the Regulation of Whaling.

[56] Michael Slezak, "Revealed: first mammal species wiped out by human-induced climate change", *The Guardian* (14 June 2016).

[57] See, e.g., the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the Convention concerning the Protection of the World Cultural and Natural Heritage, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa and the International Treaty on Plant Genetic Resources for Food and Agriculture. See, generally, United Nations Environment Programme, *Understanding Synergies and Mainstreaming among the Biodiversity-related Conventions* (2016).

important components of biodiversity and activities that have (or are likely to have) significant adverse effects (art. 7) and pursuing measures for in-situ and ex-situ conservation (arts. 8 and 9). In addition, the Convention recognizes that the authority to determine access to genetic resources rests with each national Government and sets out provisions for agreement to such access (art. 15). The broad scope of the Convention is matched by its near-universal membership: it has 196 parties, including virtually every country in the world except the United States of America, which has signed but not ratified it.

41. In 2002, the Conference of the Parties to the Convention adopted a strategic plan "to effectively halt the loss of biodiversity".[78] The parties clearly described the stakes, emphasizing that biodiversity "is the foundation upon which human civilization has been built". They stated that "the rate of biodiversity loss is increasing at an unprecedented rate, threatening the very existence of life as it is currently understood", undermining sustainable development and constituting "one of the great challenges of the modern era".[79] To meet this existential threat, the parties adopted a rather modest goal: not to halt, much less reverse, the loss of biodiversity, but only to significantly reduce the rate of loss by 2010. To that end, the strategic plan included 11 goals and 21 subsidiary targets. For example, goal 2 was to "promote the conservation of species diversity" and target 2.1 was to "restore, maintain, or reduce the decline of populations of species of selected taxonomic groups".[80]

42. In 2005, the Millennium Ecosystem Assessment explained not just how necessary ecosystem services are to human well-being, as described in section II of the present report, but also how rapidly humans were destroying biodiversity. Of the 24 ecosystem services it reviewed, 15 were being degraded or used unsustainably, including fresh water, capture fisheries, protection against erosion and the purification of air and water. The Assessment reported that humans had increased the rate of extinction of species as much as 1,000 times over background rates, that 10-30 per cent of mammal, bird and amphibian species were threatened with extinction and that at least one quarter of important commercial fish stocks were being overharvested. It also warned that the harm to ecosystems was increasing the likelihood of abrupt and potentially irreversible changes, such as the creation of "dead zones" in coastal waters and the collapse of fisheries. It underscored that the harmful effects of ecosystem degradation "are being borne disproportionately by the poor, are contributing to growing inequities and disparities across groups of people, and are sometimes the principal factor causing poverty and social conflict."[81]

43. In 2010, the secretariat of the Convention on Biological Diversity published *Global Biodiversity Outlook 3*, which showed that States had utterly failed to meet even the modest aim of significantly reducing the rate of biodiversity loss. None of the 21 subtargets had been achieved and the report identified significant progress towards only four.[82] The secretariat found multiple indications of the continued loss of biodiversity: genetic diversity in crops and livestock continued to decrease; assessed species were on average moving closer to extinction; and natural habitats, especially wetlands, salt marshes and coral reefs, continued to decline in extent and integrity. Although there was progress in some regions in slowing the rate of loss of tropical forests and mangroves, on the whole the degradation and fragmentation of ecosystems continued to lead to the loss of ecosystem services.[83]

[78] Decision VI/26, annex, para. 2.

[79] Ibid., paras. 3-4.

[80] Decision VII/30, annex II.

[81] *Ecosystems and Human Well-being: Synthesis*, pp. 1-6.

[82] Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 3* (Montreal, 2010), pp. 18-19.

[83] Ibid., p. 9.

44. The secretariat noted that over 170 States had developed national biodiversity strategies and action plans, and reported that "in many countries, the preparation of strategies has stimulated the development of additional laws and programmes, and spurred action on a broad range of issues, including: the eradication or control of alien invasive species; using biodiversity sustainably; the protection of traditional knowledge and rules to ensure local communities share benefits from bio-prospecting which might result in patents or sales of new drugs, foods or cosmetics; the safe use of biotechnology; and maintaining the diversity of plants and animals used in agriculture".[64] However, it stated that relatively few parties had fully integrated the 2010 biodiversity targets into their national strategies. Moreover, few countries were using national biodiversity strategies and action plans as effective tools for integrating biodiversity into broader policies and planning processes.[65]

45. In response to the failure to meet the objectives of the 2002 strategic plan, the parties to the Convention adopted another strategic plan for the decade 2011-2020. With admirable frankness, the parties recognized that "there has been insufficient integration of biodiversity into broader policies, strategies, programmes and actions, and therefore the underlying drivers of biodiversity loss have not been significantly reduced".[66] They highlighted the risk of "drastic consequences to human societies" if current trends continued, stated that, unless urgent action was taken, "a wide range of services derived from ecosystems, underpinned by biodiversity, could rapidly be lost" and concluded that while the poor would feel the effects most severely, no one would be immune.[67]

46. To avoid this outcome, the current strategic plan sets out 20 targets, called the Aichi Biodiversity Targets, each of which includes multiple components. For example, target 5 is to at least halve the rate of loss of all natural habitats, including forests, by 2020 and to significantly reduce degradation and fragmentation. Target 11 calls for at least 17 per cent of terrestrial areas and 10 per cent of coastal and marine areas to be included in systems of protected areas, and target 12 is for the extinction of known threatened species to be prevented and their conservation status improved.

47. In 2014, the secretariat of the Convention reported on progress towards the targets. It stated that the international community was on pace to exceed only one of the 56 components of the targets and to meet only four, including the goal of declaring 17 per cent of terrestrial areas as protected areas. With respect to 33 of the components, some progress had been made but not enough to be on track to meet the target by the deadline. This category includes the goal of halving the rate of loss of forests and protecting at least 10 per cent of coastal and marine areas. For another 15 components, including those in target 12 on threatened species, there was either no significant progress (10) or the situation actually became worse (five).[68] The secretariat drew the obvious conclusion that the status of biodiversity would continue to decline and the Aichi Biodiversity Targets would not be met unless additional actions were taken.[69]

48. States are not meeting the standards they themselves have set for the protection of biodiversity. In many developing countries, much of this failure may be due to lack of the necessary capacity, and in these cases developed countries and international institutions

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[64] Ibid., p. 20.
[65] Ibid.
[66] Decision X/2, annex, para. 5.
[67] Ibid., para. 8.
[68] Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4* (Montreal, 2014), pp. 17-22. See also World Wildlife Fund, *Living Planet Report 2016: Risk and Resilience in a New Era* (Gland, Switzerland, 2016), p. 12 ("On average, monitored [vertebrate] species population abundance declined by 58 per cent between 1970 and 2012.").
[69] Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4*, p. 10.

should increase their support for capacity-building. However, in December 2016, the Conference of the Parties to the Convention noted that "only a minority of parties have established targets [in their national biodiversity strategies and action plans] with a level of ambition and scope commensurate with the Aichi Biodiversity Targets".[70] Unless States effectively address the drivers of biodiversity loss, including by mainstreaming obligations of conservation and sustainable use into broader development policies and measures, the continuing destruction and degradation of biodiversity will undermine the enjoyment of a wide range of human rights.

C. Obligations in relation to people in vulnerable situations

49. Although the global failure to protect biodiversity ultimately affects everyone, it is already having catastrophic consequences for indigenous peoples and others who depend directly on ecosystems for their food, water, fuel and culture. In all parts of the world, from the Gualcarque River in Honduras to the Kaya forests in Kenya, from Koh Kong in Cambodia to Standing Rock in the United States, indigenous peoples and local communities are working to protect the ecosystems on which they rely from unsustainable development. While they achieve some successes, too often overexploitation of natural resources pollutes their rivers and aquifers, cuts down their forests, destroys their sacred places and displaces them from their homes. Peaceful opposition is often met with harassment, violence and even death. States have obligations not only to protect environmental defenders, but also to protect the ecosystems on which the human rights of so many people directly depend.

50. In general, States have heightened duties with respect to those who are particularly vulnerable to environmental harm (see A/HRC/25/53, paras. 69-78). As section II explains, indigenous peoples and others who closely depend on nature for their material and cultural needs are especially vulnerable to actions that adversely affect ecosystems. States should ensure that such actions, whether carried out by Governments or private actors, do not prevent the enjoyment of their human rights, including their rights to life, health, food, water, housing and culture.

51. The rights of indigenous peoples are recognized in international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and they have been elaborated by human rights authorities. There is no need to review the corresponding duties in detail here, beyond reiterating that, among other obligations, States have duties to recognize the rights of indigenous peoples in the territory that they have traditionally occupied and the natural resources on which they rely, to ensure that indigenous peoples receive reasonable benefits from authorized activities affecting such territory or resources, and to provide access to effective remedies, including compensation, for harm caused by these activities. States must facilitate the participation of indigenous peoples in decisions that concern them, and development or extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent, subject only to narrow exceptions (see A/HRC/24/41, para. 27).

52. Many people who do not self-identify as indigenous also have close relationships to the territory that they have traditionally occupied and depend directly on nature for their material needs and cultural life.[71] Although there is no instrument equivalent to the United

[70] Decision XIII/1, para. 6.

[71] The line between indigenous peoples and non-indigenous communities is not always clear, and the United Nations Declaration on the Rights of Indigenous Peoples does not attempt to define it. A key

Nations Declaration on the Rights of Indigenous Peoples for non-indigenous communities that have similarly close relationships with their ancestral territories. States nevertheless have heightened obligations to protect people in these situations from the adverse effects of exploitation of natural resources. These protections arise from multiple sources, including the general obligation of States to respect and protect the human rights of members of these communities, taking into account that their close relationship with nature makes their ability to enjoy these rights especially vulnerable to environmentally harmful actions. Among other obligations, States therefore have heightened duties to ensure that they are able to enjoy the rights to information, participation, freedom of expression and association, and effective remedies in relation to actions that may adversely affect their relationship with the ecosystems on which they depend, as well as substantive rights to protection of the ecosystems themselves.

53. Non-indigenous as well as indigenous persons may also be owed heightened obligations because of their status as members of minorities. Article 27 of the International Covenant on Civil and Political Rights provides that "persons belonging to [ethnic, religious or linguistic] minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". The Human Rights Committee has stated that "culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples", and that the enjoyment of rights to traditional activities, such as hunting and fishing, may require "positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them."[72]

54. The Human Rights Committee has made clear that States may not promote their economic development at the expense of the rights protected by article 27 of the Covenant. Whether measures that substantially interfere with the culturally significant economic activities of a minority community are acceptable depends on whether the members of the community were able to participate in the decision-making process that resulted in the measures and whether they will continue to benefit from their traditional economy. The Committee has stated that "participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members".[73]

55. Protections for non-indigenous as well as indigenous people may also arise from the principle of non-discrimination, which is recognized in the Universal Declaration of Human Rights (art. 2) and throughout human rights law. States are required to ensure that measures, including measures that may appear non-discriminatory on their face, do not have disproportionate impacts on the enjoyment of human rights on prohibited grounds, including race and ethnicity.[74] Because measures that adversely affect ecosystems may well have disproportionately severe effects on the enjoyment of human rights of members of marginalized ethnic groups who rely directly on the ecosystems, States have heightened

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consideration is whether the people themselves self-identify as indigenous. See the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1.

[72] General comment No. 23 (1994) on the rights of minorities, para. 7.

[73] See communication No. 1457/2006, *Poma Poma v. Peru*, Views adopted on 27 March 2009, paras. 7.3-7.6.

[74] Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10.

obligations to ensure that such laws and policies satisfy the requirements of legitimacy, necessity and proportionality.

56. In particular, human rights bodies have emphasized that States should protect the special relationship of people with the territory that they have traditionally occupied when their subsistence and culture is closely linked to that territory. For example, the Inter-American Court of Human Rights has held that States have heightened obligations to protect the right to property, as recognized in the American Convention on Human Rights (art. 21), of Afrodescendant tribal communities. Because such communities have their own customs and a special relationship with their ancestral territories, the Court held that, like indigenous peoples, they "require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of property rights, in order to safeguard their physical and cultural survival".[75] These special measures include an obligation on the State to recognize and protect their communal property right in the territory and the natural resources they have traditionally used. Restrictions on this right are acceptable only if they are previously established by law, necessary, proportional and have "the aim of achieving a legitimate objective in a democratic society".[76] In addition, restrictions may not deny a community's survival as a tribal or indigenous people, which requires the State to conduct assessment, consultation and benefit-sharing and, with respect to projects that would have a major impact, to obtain their free, prior and informed consent.[77] Similarly, the Committee on the Elimination of Racial Discrimination has urged the review of forestry laws "to ensure respect for ethnic groups' way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment" (see CERD/C/THA/CO/1-3, para. 16).[78]

57. Human rights bodies continue to clarify the duties owed to non-indigenous as well as indigenous people whose way of life depends directly on ecosystems.[79] While much more work remains to be done to define these obligations and the obligations owed to others in vulnerable situations (who may include women, children, the elderly, the disabled and the extremely poor) in relation to environmental harm in general and the loss of ecosystem services in particular, the obligations are already clear enough that States and others should take them into account.

58. These obligations apply not only to measures aimed at exploitation of resources, but also to those aimed at conservation. The Special Rapporteur on the rights of indigenous peoples has identified many examples of forced displacement from protected areas, whose consequences have included "marginalization, poverty, loss of livelihoods, food insecurity, extrajudicial killings, and disrupted links with spiritual sites and denial of access to justice and remedy" (see A/71/229, para. 51). Non-indigenous communities, including Afrodescendants, have also experienced adverse effects as a result of conservation measures (see, e.g., A/HRC/25/53/Add.1, para. 63). While States should do more to protect

[75] Inter-American Court of Human Rights, judgment of 28 November 2007, *Saramaka People v. Suriname*, para. 85. Among other sources, the Court drew on the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), whose scope includes tribal as well as indigenous peoples.

[76] Ibid., para. 127. See also paras. 96, 115 and 121.

[77] Ibid., paras. 128-140. See, generally, Inter-American Commission on Human Rights, *Indigenous peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* (2015).

[78] See also general recommendation No. 34 (2011) on racial discrimination against people of African descent, para. 4.

[79] The Human Rights Council open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas may provide another opportunity for such clarification.

biodiversity, they must act in accordance with the human rights of those who have long-standing, close relationships with their ancestral territories.[80]

59. Protecting the rights of those who live closest to nature is not just required by human rights law; it is also often the best or only way to ensure the protection of biodiversity. The knowledge and practices of the people who live in biodiversity-rich ecosystems are vital to the conservation and sustainable use of those ecosystems. It has been estimated that territories and areas conserved by indigenous peoples and local communities (called, for historical reasons, ICCAs, for indigenous and community conserved areas) cover at least as much land surface as protected areas administered by Governments.[81] Protecting the human rights of indigenous peoples and local communities has been shown to result in improved protection for ecosystems and biodiversity.[82] Conversely, trying to conserve biodiversity by excluding them from a protected area typically results in failure.[83] In short, respect for human rights should be seen as complementary, rather than contradictory, to environmental protection.[84]

60. International and national institutions have recognized the importance of respecting the rights of indigenous peoples and local communities who closely depend on natural resources and of supporting their efforts to conserve and sustainably use biodiversity.[85] In particular, article 8 (j) of the Convention on Biological Diversity requires each party, "subject to its national legislation", to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity", to promote their wider application and to encourage the equitable sharing of benefits. Article 10 (c) urges parties to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. The parties to the Convention have built on these provisions, including through the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention, which, among other things, provides for "the prior informed consent or approval and involvement of indigenous and local communities" in relation to access to traditional knowledge associated with genetic resources (art. 7), and requires that the parties take steps to ensure

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[80] See African Commission on Human and Peoples' Rights, *Endorois Welfare Council v. Kenya*, No. 276/2003 (2010); Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, judgment of 25 November 2015.

[81] Ashish Kothari and others, *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities* (secretariat of the Convention on Biological Diversity, Montreal, 2012), p. 30.

[82] See, e.g., World Resources Institute, *Climate Benefits, Tenure Costs: The Economic Case for Securing Indigenous Land Rights in the Amazon* (2016).

[83] See Marc Galvin and Tobias Haller, eds., *People, Protected Areas and Global Change: Participatory Conservation in Latin America, Africa, Asia and Europe* (2008).

[84] See *Kaliña and Lokono Peoples v. Suriname*, para. 173.

[85] See, e.g., the revised World Bank Environmental and Social Framework, whose safeguards, including the requirement of free, prior and informed consent, cover "sub-Saharan African historically underserved traditional local communities" as well as indigenous peoples; the statement in September 2016 by the Office of the Prosecutor of the International Criminal Court that it will give particular consideration to prosecuting Rome Statute crimes that are committed by, or that result in, "the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land"; the Convention for the Safeguarding of Intangible Cultural Heritage; the Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; and the Indian Forest Rights Act of 2006.

that the benefits arising from utilization of genetic resources and traditional knowledge are shared in a fair and equitable way with the communities concerned (art. 5).

61. The Conference of the Parties has taken a number of other decisions that recognize and support the role of indigenous peoples and local communities in the protection of biodiversity,[86] including by encouraging the parties to the Convention to support their management of ICCAs and protected areas.[87] The strategic plan for 2011-2020 (see paras. 45-46 above) includes the goals of restoring and safeguarding ecosystems that provide essential services, taking into account the needs of indigenous and local communities as well as women, the poor and the vulnerable (target 14) and respecting and fully integrating the traditional knowledge and practices of indigenous and local communities in the implementation of the Convention (target 18). Some States have reported significant progress in supporting the traditional and participatory management of natural resources.[88]

62. Conservation organizations have also committed to respect and support the rights of indigenous peoples and local communities. In Durban in 2003, the World Parks Congress of the International Union for Conservation of Nature (IUCN), an umbrella organization with more than 1,000 members, including States, government agencies and civil society organizations, adopted a new paradigm for protected areas. Replacing exclusionary "fortress" models of conservation, the Durban Accord announced, among other things, that protected areas should be established and managed in full compliance with the rights of indigenous peoples and local communities (see A/71/229, paras. 39-41). Subsequent IUCN World Parks and World Conservation Congresses have continued to endorse and develop this approach, including by expressing support for ICCAs.

63. Despite these commitments, however, substantial gaps in implementation remain. In December 2016, the Conference of the Parties to the Convention on Biological Diversity noted "the limited progress made towards Aichi Biodiversity Targets 18 and 14 at the national level and in mainstreaming Article 8 (j) and related provisions into various areas of work under the Convention, including capacity development and the participation of indigenous peoples and local communities in the work of the Convention", and also noted with concern that only a limited number of national biodiversity strategies and action plans even refer to indigenous peoples and local communities or customary sustainable use.[89] Similarly, the Special Rapporteur on the rights of indigenous peoples has identified shortcomings in implementation of the Durban commitments, including the failure of IUCN and most other conservation organizations to institute effective grievance mechanisms (see A/71/229, para. 49). On a more positive note, in 2016 the World Conservation Congress amended the IUCN statute to make it easier for indigenous peoples' organizations to join IUCN, which should facilitate closer ties with conservation organizations.

64. Other good practices in support of indigenous peoples and local communities also deserve to be highlighted and replicated. A shining example is the Small Grants Programme of the Global Environment Facility, implemented by the United Nations Development Programme (UNDP), which over the past 25 years has funded 20,000 projects in over 125 countries through grants averaging about $25,000 each. Nearly half of the grants have supported indigenous and local efforts aimed at the conservation and sustainable use of biodiversity. On his visit to Madagascar, the Special Rapporteur observed how one of these

[86] See, e.g., decision XIII/18, which contains the Mo'otz Kuxtal voluntary guidelines on measures to ensure the free, prior and informed consent, or approval and involvement, of indigenous peoples and local communities; and decision VII/16, which contains the Akwé: Kon voluntary guidelines for the conduct of social and environmental impact assessments.

[87] See, e.g., decision XII/12 and decision VII/28.

[88] Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4*, pp. 85 and 115.

[89] Decision XIII/1, paras. 8-9.

grants has directly assisted a local community to conserve endangered wildlife. Another excellent practice is the UNDP Equator Initiative, which works to support local solutions for sustainable development by building local capacity, sharing good practices and recognizing successes through its annual Equator Prizes.[90]

IV. Conclusions and recommendations

65. **Biodiversity is necessary for ecosystem services that support the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and culture. In order to protect human rights, States have a general obligation to protect ecosystems and biodiversity.**

66. **Biodiversity around the world is rapidly being degraded and destroyed, with grave and far-reaching implications for human well-being. A human rights perspective:**

(a) **Helps to clarify that the loss of biodiversity also undermines the full enjoyment of human rights;**

(b) **Heightens the urgent need to protect biodiversity;**

(c) **Helps to promote policy coherence and legitimacy in the conservation and sustainable use of biodiversity.**

67. **Procedurally, States should:**

(a) **Assess the social and environmental impacts of all proposed projects and policies that may affect biodiversity;**

(b) **Provide public information about biodiversity, including environmental and social assessments of proposals, and ensure that the relevant information is provided to those affected in a language that they understand;**

(c) **Provide for and facilitate public participation in biodiversity-related decisions;**

(d) **Provide access to effective remedies for the loss and degradation of biodiversity.**

68. **States should recognize that defenders of biodiversity are also human rights defenders, and implement the recommendations of the Special Rapporteur on the situation of human rights defenders on providing a safe and enabling environment for human rights defenders in general (see, e.g., A/HRC/25/55) and for environmental human rights defenders in particular (see A/71/281).**

69. **Substantively, every State should establish legal and institutional frameworks for the protection of biodiversity that:**

(a) **Regulate harm to biodiversity from private actors as well as government agencies;**

(b) **Adopt and implement standards that accord with international standards, are non-retrogressive and non-discriminatory, and respect and protect the rights of those who are particularly vulnerable to the loss of biodiversity and ecosystem services.**

[90] See https://sgp.undp.org and www.equatorinitiative.org.

70. States have adopted agreements and initiatives to protect biodiversity, including a comprehensive strategic plan for 2011-2020 under the auspices of the Convention on Biological Diversity. However, States are not on track to meet the targets in the strategic plan. States should redouble their efforts to achieve the targets, including by ensuring that their national biodiversity strategies and action plans reflect the necessary scope and ambition. Donor States and organizations should increase support to ensure that all States have the capacity to meet the targets, and safeguards should ensure that biodiversity-related projects do not violate human rights.

71. States must do more to respect and protect the rights of those who are most vulnerable to the degradation and loss of biodiversity. States should recognize that members of non-indigenous minority communities that have separate cultural traditions and close material and cultural ties to their ancestral territories have rights that are similar (but not simply identical) to those of indigenous peoples, and States should respect and protect their rights as well as those of indigenous peoples. States should support indigenous and local efforts to protect biodiversity, including through ICCAs, recognizing that the traditional knowledge and commitment of indigenous peoples and local communities often make them uniquely qualified to do so.

72. Businesses should respect human rights in their biodiversity-related actions, including by:

(a) Complying with the Guiding Principles on Business and Human Rights in all actions that may affect biodiversity and ecosystems;

(b) Following the Akwé: Kon voluntary guidelines;

(c) Implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples with respect to extractive activities (A/HRC/24/41);

(d) Not seeking or exploiting concessions in protected areas or ICCAs.

73. Conservation organizations should increase their efforts to fulfil their commitments to a rights-based approach to conservation, including by implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples (see A/71/229, paras. 77-82), and by:

(a) Sharing good practices;

(b) Building more active partnerships with human rights organizations;

(c) Conducting human rights impact assessments;

(d) Establishing effective grievance mechanisms.

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Report of the Special Rapporteur on freedom of religion and belief

Note by the Secretariat

In the present report, the new mandate holder, Ahmed Shaheed, presents an overview of his perspective and vision for the mandate, identifying persistent challenges and emerging trends and presenting an agenda for operationalizing the right to freedom of religion or belief within and across the United Nations system and beyond. The report includes an outline of the methods of work and programmatic priorities that will constitute the guiding framework for the mandate for the next three years consistent with the growing emphasis placed by the Human Rights Council on the need to address persistent implementation gaps in compliance with human rights standards.

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I. Introduction

1. The mandate of Special Rapporteur on freedom of religion or belief was created by the Commission on Human Rights in its resolution 1986/20 and renewed by the Human Rights Council in its resolution 6/37, in which it invited the Special Rapporteur (a) to promote the adoption of measures at the national, regional and international levels to ensure the promotion and protection of the right to freedom of religion or belief; (b) to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief, and to present recommendations on ways and means to overcome such obstacles; (c) to examine incidents and governmental actions that are incompatible with the provisions contained in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and to recommend remedial measures as appropriate; and (d) to apply a gender perspective, inter alia, through the identification of gender-specific abuses, in the reporting process, including in information collection and in recommendations.

2. In March 2016, the Human Rights Council adopted resolution 31/16, in which it, inter alia, extended the mandate of the Special Rapporteur for a further period of three years. At its thirty-second session, the Council appointed Ahmed Shaheed as Special Rapporteur on freedom of religion or belief. He officially took office on 1 November 2016. The Special Rapporteur acknowledges the prodigious contributions made to the mandate by the four previous mandate holders, including Professor Heiner Bielefeldt, and takes the opportunity to thank him for supporting the mandate beyond the original term as intended by the Council in 2013. An overview of the activities of the previous mandate holder between 1 August 2015 and 31 July 2016 is provided in the most recent interim report (A/71/269, paras. 3 – 8).

3. On 22 September 2016, the previous mandate holder, in collaboration with the World Council of Churches and the Finnish Ecumenical Council, organized a workshop on the theme, "Religion and religious freedom in international diplomacy". The main objectives of the workshop were to understand the use of religion in foreign policy, including in the areas of development and humanitarian aid, and to find ways to contribute to the advancement of religious literacy and the freedom of religion or belief. The previous mandate holder also presented his report (A/71/269), which included a thematic focus on the broad range of violations of freedom of religion or belief and their manifold root causes, to the General Assembly at its seventy-first session.

4. In the present report, his first submitted to the Human Rights Council, the Special Rapporteur presents an overview of his perspective and vision for the mandate. He highlights persistent challenges and emerging trends, while emphasizing the need to build on the sterling work of previous mandate holders to contribute to the implementation of measures identified for the promotion and protection of the right to freedom of religion or belief. In the sections below, he reviews the work of human rights experts appointed by the Council, the special procedures, and the role of the universal periodic review in advancing this right. He then discusses specific tools and initiatives that could help to effectuate the priorities and protections identified for the realization of the right to freedom of religion or belief, and presents the persistent challenges and emerging concerns that form the operative context in which the Special Rapporteur must work. The mandate holder concludes with an outline of his methods of work and programmatic priorities that will support an overall agenda focused on implementation. The agenda, which will be the guiding framework for the mandate for the next three years, is consistent with the growing emphasis placed by the Council on the need to address persistent implementation gaps in compliance with human rights standards.

II. Towards an agenda for implementation

5. In accordance with the increasing emphasis on implementing human rights reforms, the Special Rapporteur wishes to focus on operationalizing the right to freedom of religion or belief. The operational approach to human rights implementation includes traditional institutional undertaking, which focus on laws, courts and other conventional aspects of compliance, as well as efforts by the State, through policy, programmes and activities, to translate commitments to human rights into practice. The Special Rapporteur also wishes to build on existing synergies within the United Nations framework by working with partners across the wider United Nations human rights system to mainstream the promotion of the right to freedom of religion or belief in its work, and to increase the salience of the core principles related to this right.

A. Role of the Special Rapporteur

6. To the extent that the Special Rapporteur serves as the primary focal point within the United Nations human rights system to promote the right to freedom of religion or belief, he stresses that the special procedures of the Human Rights Council are most effective when they work as part of a coordinated and coherent system, as demonstrated by mandate practice. Such an approach is also in keeping with the holistic conceptualization of human rights that is necessary for the promotion of the right to freedom of religion or belief.

7. The special procedures have advanced the advocacy and protection functions of the Human Rights Council by means of official communications (allegation letters and urgent appeals) with Governments relating to the tripartite obligation of States to respect, protect and fulfil the right to freedom of religion or belief in all its dimensions. The mandate also relies on private communications alleging rights violations from victims and their advocates, and on reports documenting incidents that are incompatible with international human rights standards, including proposed legislation by Governments or the activities of non-State actors. The mandate may employ other forms of communication, including press releases and social media, to advocate on behalf of alleged victims or in relation to various incidents and situations. These communications reflect the range of violations relating to the right to freedom of religion or belief that mandate holders seek to address, and identify the individuals and communities most vulnerable to abuse. They also highlight the range of challenges facing duty-bearers and rights-holders globally in realizing the right to freedom of religion or belief.

8. The mandate issued a total of 618 urgent appeals and allegation letters to 87 States between 2004 and 30 November 2016. The majority of communications during this time frame addressed restrictions relating to manifestations of the right to freedom of religion or belief, and discrimination and intolerance based on religion or belief. Since the beginning of his tenure in November 2016, the Special Rapporteur has issued communications relating to sectarian attacks on religious minorities, apostasy and blasphemy charges, discriminatory practices relating to the construction of houses of worship, disruption of peaceful religious gatherings in private homes, the targeting of religious leaders, censorship of religious views and the confiscation of religious materials.

9. Sixty-eight per cent of the communications by the mandate on freedom of religion or belief since 2004 have been jointly issued with other mandate holders. At least 22 thematic mandate holders have issued 260 joint urgent appeals and 161 joint allegation letters with the Special Rapporteur on freedom of religion or belief. The majority of joint communications were issued with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, followed by the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, the Working

Group on Arbitrary Detention, the Special Rapporteur on minority issues and the Special Rapporteur on extrajudicial, summary or arbitrary executions. The common use of joint communications demonstrates the high degree of intersectionality between issues concerning the right to freedom of religion or belief and those covered by other thematic mandate holders. The cooperation between the mandates also provides an insight into the nature of violations that have elicited joint responses from the special procedures. The considerable body of communications represents a potential resource for evidence of impact and for identifying the variables that are most relevant in producing specific outcomes, which in turn can lead to more effective ways of utilizing the communications tool. The Special Rapporteur hopes to increase this cooperation with other thematic mandate holders, including those focusing on women's rights and economic, social and cultural rights.

10. Previous mandate holders have also examined the status of the enjoyment of the right to freedom of religion or belief in 36 States during the country visits conducted since 1994. Country visits provide mandate holders with a more dynamic way to engage constructively with States to address the nature of issues that prevent the realization of the right to freedom of religion or belief. The majority of country visits undertaken by mandate holders have been to countries located within the Asia-Pacific Group, followed by countries in the Western European and Others Group. The pattern of country visits is not necessarily an indication of the seriousness of the situation in a given country; rather, several other factors, such as the need to cover a diversity of settings and contexts and the willingness and the capacity of States to respond positively to requests to engage with various human rights mechanisms, may determine when and where visits are conducted.

11. The mandate holder has also convened or contributed to seminars, conferences and consultations with a range of objectives, including to map issues, promote dialogue and advance a better understanding of the challenges facing the promotion and protection of the right to freedom of religion or belief. These knowledge-exchange activities are critical for advancing regional, international and multi-stakeholder engagement aimed at increasing protection for the right to freedom of religion or belief, especially in the light of the operational approach stressed by the Special Rapporteur.

B. Universal periodic review and the right to freedom of religion or belief

12. Despite the fact that the right to freedom of religion or belief intersects with a range of other rights and is integral to the improvement of other fundamental rights and freedoms, the Special Rapporteur believes it was underrepresented as an issue of concern during the first two cycles of the universal period review. Of the more than 52,000 recommendations made during the first two cycles of the review, only 1,280 recommendations, or less than 2.5 per cent of the total, addressed the right to freedom of religion or belief (see table below).[1] The majority of the recommendations related to discrimination, including against religious minorities and women, while less than two dozen addressed the need to reform anti-apostasy or anti-blasphemy laws. The Special Rapporteur believes the reasons for the underrepresentation of issues relating to the right to freedom of religion or belief warrants further investigation and consideration during future review cycles, especially in the light of

[1] See UPR Info, Statistics on Recommendations (www.upr-info.org/database/statistics/index_issues.php?sk_issue=18). A total of 124 States made recommendations relating to freedom of religion or belief.

the emphasis placed on implementation of review recommendations in resolutions adopted by the Council in connection with this right.

Recommendations made during the first and second cycles of the universal periodic review: 52,282			
Total freedom of religion or belief recommendations		**1 280 (2.45 per cent)**	
Regional Group	First cycle	Second cycle	Total number
Asia-Pacific Group	199	347	546
Western European and Others Group	127	282	409
African Group	56	96	152
Eastern European Group	54	94	147
Latin American and Caribbean Group	12	14	26
Total	448	833	1 281
Number of recommendations accepted	260	543	803

C. Treaty bodies

13. The work of the treaty bodies, especially those that address States' obligations relating to the right to freedom of religion or belief, are critical to the work of the mandate holder. The Human Rights Committee – which periodically monitors the compliance of State parties with article 18 of the International Covenant on Civil and Political Rights, the main international legal provision protecting the right to freedom of religion or belief, among other rights – identifies deficits in compliance and makes recommendations on improvement by means of its concluding observations. In addition, the general comments made by the treaty bodies, and the jurisprudence from the complaints procedures of these committees, provide substantive and authoritative content on the normative framework of fundamental rights.

14. The special procedures play a vital role in ensuring that concluding observations and other work of the treaty bodies are integrated into the work of their mandates. Where treaty bodies do not undertake field visits, they could also benefit from the expertise gathered by the special procedures. Last but not least, the special procedures should follow up on treaty body recommendations aimed at withdrawing reservations to human rights treaties, including those to article 18 of the International Covenant on Civil and Political Rights, that are inconsistent with the objective and purpose of the treaties.

D. Other United Nations-related initiatives

15. The annual resolution adopted by consensus by the Human Rights Council on freedom of religion or belief, together with a comparable resolution of the Third Committee, highlight the key concerns of the international community with regard to the promotion and protection of the right to freedom of religion or belief and provide guidance

for the work of the Special Rapporteur. In addition, the Special Rapporteur recognizes the importance of engaging with the historic consensus achieved with the adoption of Council resolution 16/18, which brought together divergent views on eliminating religious discrimination and intolerance on the basis of proposals made on behalf of the Organization of the Islamic Conference and other stakeholders. The consensus-based approach guarantees religious pluralism and equality on the one hand, while promoting intercommunal harmony and calling for the prohibition of incitement to hatred on the other. In the resolution, the Council also underscored the importance of fostering the conditions for debate and dialogue, and reinforces protections for freedom of expression by narrowly construing exceptions to limits on speech deemed tantamount to "incitement to imminent violence based on religion or belief".

16. The implementation mechanism for the eight-point action plan of resolution 16/18, the Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief, has facilitated six rounds of meetings organized to foster dialogue and practical experience-sharing. The objectives of the Istanbul Process remain relevant in the light of increasing reports of State actions that are incompatible with the right to freedom of religion or belief, including the use of blasphemy and apostasy laws, which render religious minorities and dissenters vulnerable to violence; increasing scrutiny of religious groups on the grounds of national security; and growing societal intolerance of religious minorities in a range of countries and regions.

17. Although progress in the implementation of resolution 16/18 has been slow, if not disappointing, the ongoing consensus achieved by its adoption, which appears fragile from time to time, should be seen in a positive light and nurtured. States should avoid a return to the divisive debates that undercut efforts to combat religious discrimination and intolerance prior to achieving this consensus agreement. In the past few years, some States have resurrected arguments over sources of discrimination and intolerance, the responsibilities that the international community should assume, and "whether the solution to intolerance lies in strengthening the enjoyment of fundamental human rights or in setting clearer limits thereon".[2] Yet real progress by way of the Istanbul Process requires a comprehensive, introspective, transparent and inclusive approach to the implementation of the action plan outlined in resolution 16/18. Most importantly, the legal interpretations of the commitments undertaken in the action plan must comply with international human rights law.

18. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence – a normative framework spearheaded by the Office of the United Nations High Commissioner for Human Rights and adopted by experts in 2012 – can serve as a road map for the Istanbul Process in this regard (A/HRC/22/17/Add.4, annex, appendix). The Rabat Plan of Action aims to clarify the obligations of State and the responsibilities of other stakeholders under articles 19 and 20 of the International Covenant on Civil and Political Rights; in doing so, it sets out a framework of measures that include the implementation of legislation, jurisprudence and policies to combat activities that constitute incitement to violence and discrimination on multiple grounds, including religion. It recommends the adoption of comprehensive anti-discrimination legislation with a view to the undertaking of preventative action to combat incitement to hatred. It identifies three distinct types of expression: expression that constitutes a criminal offence; expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and expression that does not give rise to criminal, civil or administrative sanction but still raises concern in terms of tolerance, civility and respect for the rights of others. The plan of action also recommends

[2] Marc Limon, Nazila Ghanea and Hilary Power, "Fighting Religious Intolerance and Discrimination: The UN Account", *Religion & Human Rights*, vol. 11, No. 1 (2016), pp. 21-66.

that States codify and implement national legislation that provides robust and precise definitions of key terms, including hatred, discrimination, violence and hostility, drawing from the guidance and definitions provided in the Camden Principles on Freedom of Expression and Equality. The Rabat Plan of Action furthermore calls upon States that have anti-blasphemy laws to repeal them, since such laws stifle and unduly inhibit both the right to freedom of expression and the right to freedom of religion or belief.

19. The Special Rapporteur notes that the role of parliaments, the judiciary, the media and other national institutions are critical to the successful implementation of the Rabat Plan of Action and of Human Rights Council resolution 16/18. Parliaments occupy a particularly important role in paving the way for successful implementation of the plan of action. In order to promote equality and combat intolerance, States should establish independent national human rights institutions that comply with the Paris Principles and possess the capacity to engage effectively with civil society and help to guide interfaith dialogue. The plan of action also requires the involvement of an independent judiciary that can adjudicate cases of incitement to hatred, ensure that criminal sanction for speech is the exception and not the rule, and guarantee that efforts to secure compliance with the obligations deriving from article 20 of the International Covenant on Civil and Political Rights by means of alternative measures, such as cultural dialogue and pluralism, are protected. An independent and objective media can play a critical role in fostering such a pluralistic environment as well.

20. The Special Rapporteur also welcomes the Fez process initiated by the Special Adviser of the Secretary-General on the Prevention of Genocide at a meeting in Fez, Morocco, in April 2015. The initiative has the objective of preventing incitement to violence that could lead to atrocity crimes. The Fez declaration and draft plan of action identify a number of activities that community leaders representing different religions or beliefs could undertake to prevent and counter incitement to violence in situations that risk leading to atrocity crimes. These options, linked to paragraph 36 of Rabat Plan of Action, include engaging in dialogue with those who express radical views, countering online and offline incitement speech though unequivocal messaging, and supporting interfaith dialogue, education and activities that uphold respect for religious pluralism. The workshops that have been planned to roll out the Fez plan of action could make a vital contribution to implementing the positive measures identified in the Rabat Plan of Action, especially in countries that have experienced, or are currently experiencing, hate speech and incitement to discrimination, hostility or violence. For the Fez process to be effective in activating religious leaders in implementing the Rabat Plan of Action, however, it is axiomatic that the planned activities must be inclusive of all faith or belief communities.

21. The Special Rapporteur notes that the 2030 Agenda for Sustainable Development presents an additional opportunity to advance respect for the right to freedom of religion or belief by mainstreaming this right within the context of development work. Given the intersections between freedom of religion and numerous other rights, such as gender equality on non-discrimination in access to services, there is clearly a need to increase religious freedom literacy within the community of development actors (a field in which numerous faith-based groups have traditionally been very active). This approach is supported by growing evidence of the links between respect for the right to freedom of religion or belief and prospects for societal harmony, economic prosperity and political stability. Such evidence contradicts narratives that equate societal harmony and peace with restrictive rather than inclusive practices. Over the past decade, there has been gradual engagement between various development agencies of the United Nations and faith-based groups through the United Nations Inter-Agency Task Force on Engaging Faith-Based

Actors for Sustainable Development.[3] In 2016, the International Partnership on Religion and Development was established to facilitate engagement of faith-based organizations in development work. The Special Rapporteur welcomes these efforts and looks forward to contributing to this process. For such efforts to be successful, however, there is a need to invest in literacy on both religions and religious freedom to ensure that the engagement of actors with the development agenda actually advances the cause of human rights. This is particularly important in the light of the many misconceptions that exist regarding the right to freedom of religion or belief.

III. Addressing misconceptions about the right to freedom of religion or belief

22. While noting that addressing chronic issues of intolerance and violent extremism often requires promoting greater understanding among diverse communities, the Special Rapporteur believes that continuing reports of the most chronic violations of the right to freedom of religion or belief, which demonstrate a wide range of misperceptions and misconceptions about the specific content of this right under international law, requires long-term investment in the promotion and advancement of literacy regarding this right. Misperceptions and misconceptions are both the product of the complexity of this right and the political and ideological dispute over the norms of the international legal framework that underpin it. While article 18 of the International Covenant on Civil and Political Rights and its interpretation by the Human Rights Committee remain the most detailed articulation of the international community's understanding of the core elements of the right to freedom of religion or belief, and subsequent normative developments have expanded that understanding, there are a number of areas that are susceptible to dispute.

23. In this regard, the Special Rapporteur notes the finding by the Human Rights Committee with regard to the customary character of the right to freedom of religion or belief, and reaffirms and echoes the declarations of previous mandate holders regarding the normative framework of the right to freedom of religion or belief.[4] He also notes that the scope, substance and contours of this framework are subject to continuing development, clarification and evolution. For the purposes of the present report, however, the Special Rapporteur wishes to highlight some of the most common misconceptions that exist regarding his mandate, and also what the right to freedom of religion or belief encompasses (and does not encompass).

24. Individuals, not religions, convictions, belief systems or truth claims, are the right-holders of the right to freedom of religion or belief. More specifically, this right is not designed to protect beliefs as such (religious or otherwise), but rather believers and their freedom to possess and express their beliefs either individually or in community with others in order to shape their lives in conformity with their own convictions (A/71/269, para.11).

25. Individuals have the right to publicly manifest their religion or belief, alone or together with others, and the prerogative of deciding whether they wish to manifest their religious convictions. It is ultimately up to the individual to decide whether he or she wishes to manifest his or her right to freedom of religion or belief at all and, if so, whether these manifestations take place in private or in public. This is an important distinction,

[3] See United Nations Population Fund, annual report of the United Nations Inter-Agency Task Force on Engaging Faith-Based Actors for Sustainable Development, 2016.

[4] Human Rights Committee, general comment No. 24 (1994), para. 8. See also Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (New York, Oxford University Press, 2015).

especially since the right to freedom of religion or belief is not contingent upon recognition or registration by the State.

26. Although international law does not provide a definition of what a religion is, the scope of what is protected by the right to freedom of religion or belief must be construed broadly, covering theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. It is, therefore, not limited to traditional, mainstream or "recognized" religions and practices.

27. There cannot be a meaningful right to freedom of religion or belief unless it includes the freedom to change one's religion or belief. Although the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief are less explicit than article 18 of the Universal Declaration of Human Rights in endorsing the right to change one's religion, the Human Rights Committee provided greater clarity in its general comment No. 22 (1993). In particular, it stressed that the right to "have or to adopt" a religion or belief necessarily entailed the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. This language – "including the right to change one's religion or belief" – is also consistently reflected in resolutions on freedom of religion or belief adopted by consensus by the General Assembly and the Human Rights Council.[5] The Special Rapporteur notes that this provision refers specifically to the internal dimension of freedom of thought, conscience, religion or belief (often referred to as *forum internum*), which enjoys unconditional and unqualified protection and cannot be restricted, limited, interfered with or derogated from under any circumstances, including during times of public emergency.

28. Policies or practices that do not, prima facie, target the adoption of a particular religion or belief may still amount to a violation of article 18 (2) of the International Covenant on Civil and Political Rights if they are intended to impair an individual's ability to freely hold, adopt or change their religion or belief, or if they have such an effect. Examples of indirect yet impermissible restrictions on the *forum internum* could include limitations on access to education, medical care or employment, or family law matters, such as custody of children, which have the ultimate effect of impairing the individual's ability to freely hold, adopt or change his or her religion or belief. The Special Rapporteur notes, however, that such determinations are highly fact-specific and must be determined on a case-by-case basis so as to not vitiate substantive provisions of article 18 of the Covenant.

29. The right to freedom of religion or belief encompasses all aspects of religious or belief-related life, including protections for religious and non-religious convictions, conscience-based positions and manifestations of the beliefs and practices related to them. This spectrum, in turn, includes the right to freely, and without undue burden or unreasonable interference, develop religious or belief-related identities, to bear witness to one's beliefs by freely communicating with fellow believers or non-believers, to organize and enjoy community life based on common or shared beliefs, formal and informal education related to the transmission of one's belief system to members of the community (particularly children) or others, and the management of institutions, such as charitable organizations, related to these beliefs.

30. While international human rights law allows, with high thresholds, for certain restrictions related to the manifestation of one's religion or beliefs (often referred to as

[5] See General Assembly resolutions 62/157, 63/181, 64/164, 65/211, 66/168, 67/179, 68/170, 69/175, 70/158 and 71/196; and Human Rights Council resolutions 16/13, 19/8, 22/20, 25/12, 28/18 and 31/16.

forum externum), any and all limitations must be the exception, not the rule. Moreover, the burden of justification for such restrictions falls on those who wish to impose them, often Governments or State organs. According to article 18 (3) of the International Covenant on Civil and Political Rights, which must be strictly interpreted, all limitations on the right to freedom of religion or belief must be prescribed by law, and they must be necessary and directly related to the pursuit of a legitimate aim: the protection of "public safety, order, health, or morals or the fundamental rights and freedoms of others". These restrictions must also be applied in a non-discriminatory manner and be proportionate to the realization of the legitimate aim and, therefore, be the least restrictive among all the adequate measures that could possibly be applied and, in any case, without vitiating the right itself. Unlike some other provisions of the Covenant (such as articles 12, 13, 14, 19, 21 and 22), the right to freedom of religion or belief cannot be restricted on the grounds of national security, and the non-discriminatory nature of the right ensures that nationality cannot form a basis for imposing restrictions on minorities, migrants or non-nationals.

31. The right to freedom of religion or belief and the right to equality are intimately linked. It is not enough only to recognize equality as constituting an underlying principle of this right; it would be more appropriate to view the right to freedom of religion or belief as also constituting a right to equality. This right prohibits discrimination on the basis of religion or belief system, recognized as sacrosanct by a number of human rights instruments. It must be clear, however, that the right to freedom of religion or belief does not give the individual – as a right-holder – the power to marginalize, suppress or carry out violent acts against other individuals and those in vulnerable situations, such as women or members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, under the guise of manifesting their religion, or as constituting the "moral high-ground".

32. While official status or recognition for a particular religion or belief does not *per se* violate a state's article 18 obligations, the pre-eminence enjoyed by religions or State ideologies should not result in the impairment of this or other fundamental rights recognized under international law; nor should it result in any discrimination against persons who do not accept the official ideology or who oppose it. The previous mandate holder repeatedly stressed that it seemed difficult, if not impossible, that the application of the concept of an official State religion in practice would not have adverse effects on religious minorities by way of discriminating against their members (A/HRC/19/60, para. 62; A/67/303, para. 47). It should be noted in this regard that some State parties to international human rights treaties, including the International Covenant on Civil and Political Rights, have submitted general reservations that apparently justify certain restrictions of fundamental rights, or violations of the principle of non-discrimination based on religious or belief-based principles. In the same manner, however, equality in and of itself cannot guarantee the right to freedom of religion or belief. For example, "doctrinal secularism", which rather than creating an inclusive space for religious pluralism on a non-discriminatory manner but emphasizes State secularism over the right to freedom of religion or belief, could engender activities that reduce the space for religious or belief pluralism. It is pertinent to recall, therefore, that all human rights are interdependent, interrelated and universal, and must be conceptualized in a holistic manner without perceiving of a hierarchy of rights.

33. The Special Rapporteur believes that acknowledging and addressing the aforementioned common misperceptions, among others, is critical to protecting and advancing the most basic and foundational principles of the right to the right to freedom of religion or belief. Indeed, the corpus of work produced by the mandate over the past 30 years, and development of the wider human rights framework during that period, together with the growing body of jurisprudence from treaty bodies and regional human rights mechanisms, reinforces this finding. Such an exercise will also help to strengthen the mandate holder's role in addressing the key challenges of our time by engaging more robustly and

meaningfully with civil society to challenge these misperceptions as a way of countering violent extremism, mobilizing faith communities to realize a sustainable development agenda, and increasing religious freedom literacy for the betterment of protections for religious freedom or belief.

IV. Recurring and emerging issues of concern

34. As a right that is both foundational to and interdependent on the human rights framework, the global pushback on human rights has generally deepened the worldwide crisis of the right to freedom of religion or belief. The ability of believers and non-believers to manifest their faith or convictions faces serious threats from State and non-State actors alike. Members of religious minority communities, as well as dissidents, are often confronted with State and non-State actor-induced threats to their freedom, safety and security.

35. The Special Rapporteur expresses his concern at various reports suggesting that targeted harassment, intimidation or discrimination against religious groups by government actors and non-State actors has, and continues to be, prevalent in many countries. He also acknowledges reports suggesting the imposition of severe restrictions on the right to freely hold, adopt, change or manifest beliefs by many Governments. This behaviour includes discrimination on the grounds of religion or belief in employment, education and housing, the destruction of holy sites, verbal and physical assaults, arrest and detention, and impunity for non-State actors alleged to have perpetrated such violations.

36. At the same time, multiculturalism and corresponding concepts such as tolerance, respect for diversity, and pluralism are a growing source of contention and are increasingly being scapegoated by an underlying narrative that maintains there are zero-sum trade-offs between societal harmony and diversity, pluralism and solidarity, and security and human rights. Growing intolerance, linked in part to the rise of populist electoral politics and violence in the name of religion, has led to a reconsideration of the value of respect for and the appreciation of diversity in a number of regions around the globe, which can, in turn, have a negative impact on the ability of religious minorities and non-believers to manifest their beliefs. These trends have been accompanied by a rise in reports of incitement to discrimination or violence, and in some cases hate crimes, by extremist groups, vigilante mobs and other non-State actors that often carry out their acts in the name of religion.

37. Moreover, the securitization of human rights, which is largely a State response to countering violence in the name of religion, further compounds the corrosive conditions that already undermine the right to freedom of religion or belief. Policies that are adopted to enhance the capacity of security forces to combat terrorism by limiting fundamental rights, such as the rights to freedom of expression, association and peaceful assembly, often have dire consequences for the enjoyment of the right to freedom of religion or belief. The dilemmas posed by securitization will require close scrutiny during the current tenure of the mandate holder.

A. Limitations amounting to coercion or unlawful restriction on manifestations of religion or belief

38. The vast majority of Member States have codified protections for the right to freedom of religion or belief in their constitutions or legislation. Despite these protections, however, most States also have laws or regulations on the books that unduly or unlawfully

restrict that same right. This includes statutes criminalizing blasphemy or apostasy (with punishments for such offences ranging from fines to the death penalty).

39. Notwithstanding the absolute protections covering the right to have, adopt or change one's religion or belief (or not have any beliefs at all) under international human rights law, more than 10 per cent of countries around the world criminalize apostasy. According to the International Humanist and Ethical Union, there has been a worrying trend worldwide towards more targeted discrimination and violence against atheists and non-religious persons in recent years. In particular, 22 countries allow the use of the death penalty for apostasy and at least 13 have capital punishment for atheists.[6] While anyone can run afoul of these laws because they effectively criminalize dissent and free-thinking, "non-believers", humanists and atheists are particularly at risk. Apostates and non-believers are particularly at risk from non-State actors or religious vigilantes or "forces", which are known to operate with impunity in a number of States.

40. Similarly, anti-blasphemy laws, which prohibit or criminalize the alleged "defamation" of religious beliefs and principles, or those which allegedly insult religious figures, have a disproportionate impact on members of minority religious communities and "non-believers". Blasphemy, which is generally framed as a strict liability offence and based on vague and overly broad criminal statutes, is increasingly used against political opponents for their opposition to the Government. Blasphemy is an offence in at least 49 countries punishable with a prison term or in some cases with the death penalty.[7] The Human Rights Committee, in its General Comment no. 34 (2011), noted that blasphemy laws were incompatible with the International Covenant on Civil and Political Rights, except in the specific circumstances envisaged in article 20 (2). It stressed that "it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers", and that it would also be impermissible for such prohibitions "to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith".

41. Common and recurring limitations on the manifestation of religious principles or concepts of belief generally involve the freedom to worship (including at designated places of worship); religious symbols or iconography (such as the *hijab* for women in Islam); the observance of holidays and days of rest; the appointment of clergy; teaching and disseminating materials (including missionary activity); the right of parents to ensure the religious and moral education of their children according to their convictions; registration as a precondition for practicing one's religion or belief (as opposed to acquisition of a legal personality and related benefits); communication with individuals and communities on religious matters at the national and international levels; the establishment and maintenance of charitable and humanitarian institutions that can solicit or receive funding; and conscientious objection.

42. Other examples of common types of limitations or restrictions interfering with the right to freedom of religion or belief include criminal legal sanctions, burdensome administrative regulations or civil penalties, and discriminatory personal status and family laws, as well as discrimination in the work place and the challenges related to the enshrinement of the principle of reasonable accommodation (see A/69/261). The Special Rapporteur notes that members of minority communities and other persons and groups in vulnerable situations are often disproportionately affected by restrictions on manifestations of religion or belief.

[6] International Humanist and Ethical Union, Freedom of Thought Report 2016.

[7] Ibid.

43. The Special Rapporteur notes that unlawful restrictions imposed by States on manifestations of the right to freedom of religion or belief are common, recurring and continue to comprise the majority of violations of this right. A review of information published by United Nations human rights mechanisms, including the Working Group on the Universal Periodic Review and the treaty bodies, such as the Human Rights Committee, shows that many States rely on restrictions as the rule and not the exception, and often fail to provide any justification for limiting the right to freedom of religion or belief pursuant to the criteria laid out in article 18 (3) of the International Covenant on Civil and Political Rights. When States give a justification for restricting manifestations of this right, they often do so with vague or overly broad regulations that fail to meet the strict requirements of article 18 (3).

B. Non-discrimination and equality, and persons and groups in vulnerable situations

44. Article 2 (1) of the International Covenant on Civil and Political Rights requires State parties to respect and ensure that all individuals within their territory enjoy the rights recognized in the Covenant "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". It is the cornerstone of the principle of non-discrimination in international human rights law. The principle of non-discrimination applies to both the enjoyment and lawful restriction of this right. Indeed, in the view of the Special Rapporteur, a claim for equality for all is inherent to the right to freedom of religion or belief.

45. Nonetheless, a large percentage of discriminatory provisions imposed by States and actions taken by non-State actors are based on religion or belief, and disproportionately target religious minorities or, more generally, those deemed "non-believers". As already noted, while official status or recognition for a particular religion or belief does not per se violate a State's obligations under article 18 of the International Covenant on Civil and Political Rights, the right to freedom of religion or belief is most challenged when the State assumes the role of guardian or custodian of certain truth claims rooted in a majority religion (or in a few cases, minority religion). The Special Rapporteur notes that, in certain States where religion has been given "official" or privileged status, other fundamental rights of individuals – especially women, religious minorities and members of the LGBTI community – are disproportionately restricted or vitiated under threat of sanctions as a result of obligatory observation of State-imposed religious orthodoxy, such as wearing the *hijab* or the need to conceal sexual orientation or gender identity. The right to freedom of religion or belief is further challenged by attempts by States to impose a doctrinal secularism as noted above, to sanitize the public sphere of concepts associated with religious or belief systems. Therefore, it is reasonable to assume that State-religion relationships can, both directly and indirectly, lead to the unintended or deliberate perpetuation of discriminatory practices that undermine the right to freedom of religion or belief of minority communities.

46. In response, discussions held at the international level on discrimination against religious minorities have advanced significantly in recent decades, a trend that should be welcomed and encouraged. Apart from the ongoing need to tackle direct and open manifestations of discrimination, there is a need for greater sensitivity to more obscure forms of discrimination, such as prima facie "neutral" rules prescribing certain dress codes in public institutions. Although they usually do not target a specific community openly, such rules can amount to discrimination against persons belonging to religious minorities if those persons (often women) follow their conscience in following a particular dress code. Similar problems may arise with regard to dietary rules, fasting, public holidays, labour

regulations, public health norms or other issues. Overcoming the various forms of discrimination in the field of religion or belief, including indirect and structural discrimination, is a complex task that requires moving beyond mere formal or codified equality towards the concept of substantive equality, including by adopting practical measures that ensure reasonable accommodation across various dimensions in the daily lives of believers and non-believers (A/69/261, paras. 49-66).

47. Discrimination within the context of the right to freedom of religion or belief is not limited to members of religious minorities or non-believers, and can also apply to members of religious majority groups and unrecognized or "non-traditional" groups. The Special Rapporteur notes that previous mandate holders consistently identified other groups, including women, children, persons deprived of their liberty, refugees, migrant workers (including domestic workers), internally displaced persons, and members of the LGBTI community, as persons particularly vulnerable to discrimination on the basis of religion or belief. Discrimination is often manifested in one of two ways: (a) the individual's enjoyment of the right to freedom of religion or belief is restricted or interfered with, either by the State or by non-State actors, specifically because of their membership in the group; or (b) their enjoyment of other fundamental rights is restricted or interfered with (again either by the State or non-State actors) on the basis of religion or belief. It therefore follows that, in addition to respecting the principle of non-discrimination, Member States also have a duty to protect individuals from discrimination by third-party non-State actors, including threats stemming from religious vigilante groups or even terrorist groups. Depending on the precise nature of the problem, different initiatives may be required, such as legislative support for religious minorities against discrimination in the workplace, measures to protect people from forced conversion, and policies for combating violent extremism, vigilantism or terrorism.

48. It should be noted that, in recent times, some of the most pernicious violations of the right to freedom of religion or belief have been, and continue to be, carried out by non-State actors, including mobs, vigilante groups, anti-government insurgents and terrorist organizations. The threat to the right comes not only from those operating with impunity in failed or poorly governed States; it can also emanate from laws and policies that discriminate against religious minorities and dissenters and empower non-State actors to "punish" them without fear of reprisal.

49. As in the case of previous mandate holders, the Special Rapporteur will continue to highlight gender-specific abuses against women and girls with regard to the right to freedom of religion or belief, in accordance with article 3 of the International Covenant on Civil and Political Rights, other human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women, and the mandate's requirement to mainstream gender in its work, both substantively and procedurally. This approach will focus on both discrimination based on gender (and gender identity), which has a negative impact on a woman's ability to enjoy her right to freedom of religion or belief, and cases where the State or non-state actors have sought to justify discrimination on the basis of gender by relying on religious freedom or "liberty" arguments. Indeed, the Human Rights Committee, in its general comment No. 28 (2000), found that article 18 of the Covenant could not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion; it concluded that States parties should therefore provide information on the status of women with regard to their freedom of thought, conscience and religion, and indicate the steps they had taken or intend to take both to eliminate and prevent infringements of these freedoms for women and to protect their right not to be discriminated against.

50. The Special Rapporteur notes that, while the intersection between the right to freedom of religion or belief and women's right to equality may, at times, seem

inharmonious, it is erroneous to assume that these rights are incompatible. Such an assumption runs the risk of overstating the tensions between these two rights at the normative level, weakening critical protection gaps and foreclosing the potential for constructive and synergistic exchange (see A/68/290). It is unquestionable that instances of forced marriage, female genital mutilation, forced conversion, honour killing, enforced ritual prostitution, sexual slavery, trafficking and over-policing of dress codes, and the denial of educational and employment opportunities, have all been justified on the basis of religious traditions. The Special Rapporteur fully agrees with previous mandate holders that the right to freedom of religion or belief can never be used to justify violations of the rights of women and girls, and that "it can no longer be taboo to demand that women's rights take priority over intolerant beliefs used to justify gender discrimination" (see A/65/207, para. 69; A/66/156, para. 16; A/68/290, para. 30; A/HRC/16/53, para. 16; and A/HRC/19/60/Add.1, para. 44). Acknowledging and rebuking these practices, however, does not mean tacitly accepting an inherent incompatibility between the right to freedom of religion or belief and gender equality. Instead, the two should be understood in a holistic manner as mutually reinforcing human rights norms (see A/68/290, paras. 19 and 66).

51. The right of children to freedom of religion or belief is violated in myriad ways by both State agencies and non-State actors. Human rights abuses affecting children often tend to be intersectional, such as the abduction and forced conversion of girls from religious minority communities by armed groups. According to article 14 of the Convention on the Rights of the Child, the right of the child to freedom of thought, conscience and religion encompasses rights and duties of parents or legal guardians "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child." Indeed, the Committee on the Rights of the Child, in its general comment No. 12 (2009), acknowledged that, in order for the rights of the child to be fully realized, their right to be heard in all matters affecting their well-being and welfare, including matters related to freedom of religion or belief, must be respected alongside their right to seek and receive direction and guidance from their parents or legal guardians, which can compensate for their lack of knowledge, experience and understanding and may be restricted by their evolving capacities.

52. Religious persecution often results in displacement and a surge in refugee populations of an extremely large scale. Asylum seekers and internally displaced persons must benefit from the right to freedom of religion or belief and other human rights guarantees not only because they enjoy the same protections as others, but because they are in a particularly vulnerable situation and often at a disadvantage in asserting their rights owing to displacement or migration, or lack of familiarity with the host language and political, social and legal context (see A/62/280).

53. The Special Rapporteur notes with concern the increasing number of reports regarding the failure of States, including those who are party to the Convention relating to the Status of Refugees, to provide protections to asylum seekers who fear return to their country of origin because of fear of persecution based on religion or belief. This failure includes the practice of refoulement, or forcible return, of refugees who fear persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion. As noted by various international mechanisms, including the Human Rights Committee, the Committee against Torture and the European Court of Human Rights, there is a strict prohibition in international law on refoulement: article 7 of the International Covenant on Civil and Political Rights, article 3 of the Convention against Torture and article 3 of the European Convention on Human Rights are non-derogable. The afore-mentioned treaty bodies, as well as the European Court of Human Rights, have affirmed the *jus cogens* character of the non-refoulement principle where an asylum seeker faces serious risk of torture or related ill-treatment. An issue that merits special mention is increasing intolerance of refugees and asylum seekers of a particular religious affiliation in order to,

for example, maintain the traditional religious make-up of a State or to appease populist responses to the "other". It must be emphasized that this action amounts to a "territorialization" of religion or belief, which goes against both the spirit and the letter of the right to freedom of religion or belief (A/71/269, para. 78).

C. Incitement to violence based on religion or belief

54. The rise of violence in the name of religion, and its association with extremism, have necessitated the formulation of strategies and policies to counter violent extremism. The Special Rapporteur recognizes that it is essential for security agencies to be empowered to carry out their obligation to combat terrorism and to protect communities against violence and serious rights abuses. Indeed, terrorist groups have been responsible for some of the most egregious human rights violations. Non-State actors, such as Islamic State in Iraq and the Levant (ISIL, or Daesh), have been responsible for widespread and brutal attacks against Yazidis, Christians, Shia and other persons and groups in vulnerable situations in the territories they control, reportedly involving up to 10 million people in Iraq and the Syrian Arab Republic alone. Attacks have included killings, torture, enslavement and trafficking, rape and other sexual abuse. Similarly, Boko Haram has been responsible for, inter alia, killings, torture, abductions, violence against children and the use of children in hostilities.

55. There are, however, also concerns that some of the policies designed to make communities secure are having a negative impact on human rights and fundamental freedoms. While the quest for security and efforts to promote human rights are often seen as conflicting priorities, the failure to reconcile and resolve such tensions might actually make communities less secure, as acknowledged in pillar IV of the United Nations Global Counter-Terrorism Strategy.[6] It is axiomatic that, rather than impose undue restrictions on the right to freedom of religion or belief, promoting and protecting this right can more effectively serve to prevent or counter violent extremism. Indeed, respect for the right to freedom of religion or belief not only sets the context for democratic ideals to thrive but can also strengthen societal resilience against extremist discourse. Furthermore, measures to prevent and counter violent extremism must not have any direct or incidental effects that would result in discrimination, stigmatization or religious profiling (A/HRC/33/29, paras. 31 and 64).

56. The Special Rapporteur believes that certain groups of people in vulnerable situations, either on account of their faith or because of their exposure to a high risk of violation of their rights, require additional attention. He also notes that the apparent trend towards identity-based politics worldwide, which has been accompanied by calls for laws and practices that effectively discriminate against minorities on account of their religion or belief, may lead to intolerance, discrimination and incitement to violence based on religion or belief. The climate of intolerance requires greater attention to the implementation of the Rabat Plan of Action and its advocacy of a multi-pronged approach, including non-restrictive measures to address incitement to discrimination, hostility or violence.

57. Unfortunately, the lack of prosecution of "real" incitement cases and the persecution of minorities under the guise of domestic incitement laws is pervasive. The Special Rapporteur notes that the protections afforded in article 20 (2) of the International Covenant on Civil and Political Rights against incitement to hatred are subject to strict criteria to ensure that they do not vitiate other rights, including freedom of expression and religion. As noted above, the Rabat Plan of Action clarifies that article 20 of the Covenant requires a

[6] General Assembly resolution 60/288.

high threshold because, as a matter of fundamental principle, limitations of speech must remain an exception. It proposes a six-element test that should support judicial processes in assessing whether concrete acts actually amount to "incitement to discrimination, hostility or violence" and are serious enough to be considered criminal offences: the social and political context; the speaker (such as his or her status and influence); the intent of a speech act (as opposed to mere negligence); its content or form (such as style and degree of provocation); the extent of the speech act (for example, its public nature and the size of its audience); and the likelihood and imminence of actually causing harm. The Rabat Plan of Action calls upon States to bring their relevant legislation fully into line with articles 18, 19 and 20 of the Covenant when taking action against incitement.

58. Over the years, the holders of the mandate on the right to freedom of religion or belief have shown sustained concern over the impact of violence in the name of religion, as well as overly broad policies and practices by States that target newer religions or dissidents. They have proposed numerous strategies to deal with the issue of violent extremism, including promoting interreligious communication and calling for more consistent and objective reporting by the media (see A/55/280, A/HRC/13/40 and A/HRC/28/66). Recent programmes on preventing or countering violent extremism have highlighted the importance of the engagement of young people. The Special Rapporteur is keen to examine the impact of such measures on youth and children (see A/HRC/33/29, paras. 42-48).

V. Conclusions, proposed methods of work and recommendations

59. **It is evident from the foregoing overview that, in addition to addressing traditional restrictions on the right to adopt, hold, change and manifest religion or belief, three issue areas are likely to occupy the majority of the mandate's time in the immediate future. The first two are the politicization and the securitization of freedom of religion or belief, as noted above; the third is the impact of these two phenomena on persons and groups in vulnerable situations.**

60. **The politicization of the right to freedom of religion or belief often aggravate existing tensions in civil society and between these actors and the State, thereby increasing the risk of intolerance and incitement to violence and discrimination. The implementation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and the *Fez* process, together with investments in religious freedom literacy, can all contribute to addressing these challenges. At the same time, there is a need to undertake a more systematic study of the incidents, patterns, correlations and causes of intolerance and incitement to violence and discrimination to identify triggers and to help in the design of policies to operationalize respect and protection for the right to freedom of religion or belief.**

61. **The rise in violent extremism in the name of religion has necessitated a range of preventive policies from States around the world; there is a need both to understand and to address their impact on the right to freedom of religion or belief. It is important to identify ways to reconcile the pursuit for greater security against violent extremism with protecting human rights, and also the ways in which greater respect for freedom of religion or belief can actually help to prevent violent extremism. Conceptual and case studies in this regard can help both to clarify the real issues at stake and to identify pathways to the realization of security and the protection of human rights.**

62. As discussed above, the Special Rapporteur would like to prioritize the implementation of the right to freedom of religion or belief as the primary objective of his mandate. This approach is critical to addressing the very serious challenges facing this right globally, and dovetails the emerging implementation agenda of the Human Rights Council with regard to the compliance gap in realizing human rights protections more generally.

63. The wide range of misconceptions that are frequently used to justify violations of the right to freedom of religion or belief implies that more work needs to be done in clarifying further the normative content of the right and promoting literacy regarding what the right actually encompasses. While it is not always clear why States choose to comply with their human rights commitments without effective enforcement mechanisms in international law, studies suggest that norm clarification and simplification can contribute to what has been called the "practicalization" of human rights. The operational approach to human rights can help to contextualize a norm and make it more amenable to policy formulation and implementation that is more local and participatory in nature. Contextualization will, however, require the identification of practical guidelines that can ensure fidelity to the normative content and framework of the right to freedom of religion or belief. On issues where guidelines already exist, such as the Rabat Plan of Action or the Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion, Tolerance and Non-Discrimination (see E/CN.4/2002/73, annex, appendix), their application can be further encouraged by emerging national arrangements for engagement with international human rights mechanisms.[9]

64. The Special Rapporteur notes that the cooperation of States will be vital to advance a successful agenda to protect and promote the right to freedom of religion or belief. Cooperation can take many forms. Opportunities to consult with States individually and regionally would be useful in identifying both challenges and best practices in an effort to encourage a "race to the top". Consultations could also identify areas where capacity-building can play a transformative role. The cooperation of States will also be critical in helping to carry out the protective function of the mandate by ensuring that effective and responsive channels of communication exist whereby the Special Rapporteur may express his concern regarding alleged violations of the right to freedom of religion or belief, and country visits can be conducted in a spirit of constructive engagement and cooperation aimed at facilitating the realization of the right at the national level.

65. The special procedures of the Human Rights Council are most effective when they operate as a cohesive system. For the implementation approach/agenda to succeed, it is imperative that the mandate fully engage with other special procedures and parts of the United Nations human rights system, including processes related to the universal periodic review and reviews of States conducted by relevant treaty bodies, such as the Human Rights Committee.

66. The Special Rapporteur also believes that a systematic study and assessment of the impact of the mandate and other mechanisms that promote the right to freedom of religion or belief would make a useful contribution to understanding what approaches work best to achieve concrete results on the ground. To this end, and to the extent that

[9] See Office of the United Nations High Commissioner for Human Rights, *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*, Geneva, 2016.

resources are available, the Special Rapporteur intends to undertake such a study over the next three years.

67. The Special Rapporteur welcomes the greater attention being paid to the promotion of the right to freedom of religion or belief at the national and international levels by Governments, parliamentarians, national human rights institutions, intergovernmental organizations, human rights organizations, faith-based organizations, and academia. They have raised international awareness about country-specific issues and problems, increased sensitivity to existing challenges and emerging trends, encouraged positive actions by States, fostered dialogue and interfaith communication, created networks of parliamentarians, diplomats, human rights defenders and academics around the issue of the right to freedom of religion or belief, and developed tools and frameworks for the advancement of respect for this right. The Special Rapporteur believes that these efforts and activities can be harnessed to support even more effective implementation of the right to freedom of religion or belief, and notes that efforts aimed at identifying interdisciplinary and multi-sectoral approaches to promoting this right must continue to be bolstered, including by fostering greater collaboration among these diverse actors.

68. The mandate has had a fruitful relationship with a range of civil society actors over the past 30 years. Their contributions to the capacity, efficiency and impact of the special procedures and other human rights mechanisms, and their ability to generate respect for human rights domestically, has been, and remains, crucial to bolstering respect for the right to freedom of religion or belief both nationally and internationally. The Special Rapporteur will, therefore, continue to engage with, and expand, this network of actors and stakeholders, including existing regional and national human rights mechanisms, in an effort to benefit from this vital resource.

69. The Special Rapporteur stresses the importance of the roles and responsibilities of civil society actors, especially religious and community leaders, in generating cross-boundary cooperation among religions and beliefs and for this engagement to be grounded in the principles of universality, equality, inclusivity and transparency. He calls upon all non-governmental human rights organizations working on economic, social and cultural rights, and civil and political rights, to work with faith- and belief-based civil society actors, at both the level of the United Nations and on the ground, to build coalitions that transcend boundaries based on religion or whatever belief.